



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

BF12056,5

**HARVARD COLLEGE
LIBRARY**



**THE GIFT OF
CHARLES H. TAYLOR**

CLASS OF 1890

OF BOSTON

THE
LIVES AND TRIALS
OF
ARCHIBALD HAMILTON ROWAN,
THE REV. WILLIAM JACKSON,
THE DEFENDERS,
WILLIAM ORR, PETER FINNERTY,
AND OTHER
EMINENT IRISHMEN.

WITH
INTRODUCTION, NOTES, &c.

BY THOMAS MAC NEVIN, ESQ.,
BARRISTER AT LAW.

DUBLIN:
PUBLISHED BY JAMES DUFFY,
10, WELLINGTON-QUAY.

MDCCCXLVI.

Br 12056.5
1



Gift of
Charles H. Taylor
Boston

5/2/23

CONTENTS

	Page
HISTORICAL INTRODUCTION, ...	i
MEMOIR OF ARCHIBALD HAMILTON ROWAN, ...	41
TRIAL OF ARCHIBALD HAMILTON ROWAN FOR SEDITIOUS	
LIBEL, ...	51
MEMOIR OF THE REV. WILLIAM JACKSON, ...	177
TRIAL OF THE REV. WILLIAM JACKSON FOR HIGH TREASON,	187
SOME ACCOUNT OF THE DEFENDERS, ...	283
TRIALS OF THE DEFENDERS FOR HIGH TREASON, ...	297
ACCOUNT OF WILLIAM ORR'S TRIAL AND EXECUTION, ...	481
TRIAL OF PETER FINERTY FOR SEDITIOUS LIBEL,... ..	497
TRIAL OF PATRICK FINNEY FOR HIGH TREASON, ...	547

INTRODUCTION.

THE principles of parliamentary reform had gained considerable ground in Ireland previous to the year 1790 ; but their proselytes, to a great extent, had been amongst the aristocratic portion of society, and there were but few men who were enlightened enough to combine with a demand for parliamentary reform, that other equally necessary measure, the removal of Catholic disability.

Parliamentary reform was a Whig measure, and the Whigs of Ireland had not made up their minds that its blessings should go beyond the pale of their own sect. The Northern Whig Club, founded under the fatal auspices of Lord Charlemont, partook of the character of its patron, and amongst its numbers were men distinguished, but a few years after its dissolution, for principles and conduct alike destructive to civil and religious freedom, and to national independence. It was founded in Belfast in March, 1790. Its career was brief and useless.

A society, whose existence was pregnant with the most important events, which, before its destruction, involved in its body a considerable portion of the people, and threatened the existence of English power in Ireland, followed in order of time the Northern Whig Club. It occurred to a few young and bold spirits—found in the middle ranks of life in Belfast, and chiefly Presbyterians—that the great defect in the previous movements for a redress of political grievances was the sectarian bigotry which excluded the Catholics from any participation in the blessings of reform. The young men of Belfast judged justly, that the hope of obtaining a full

representation of the people in parliament, whilst two-thirds of them were to be excluded from any share in it, was mischievous and absurd. "Our efforts for reform," said Neilson to his friends, "have hitherto been ineffectual, and they deserve to be so, for they have been selfish and unjust, as not including the rights of the Catholics in the claims we put forward for ourselves."

The result was, that they set about the formation of a society which should be neither sectarian nor exclusive, but whose objects should be the political amelioration of all the people of this country. Attributing present evils to two causes—the want of a liberal system of popular representation and the existence of Catholic disability—they adopted as the ends of their institution two remedial measures which have since become parts of the British constitution. In the liberality of their views towards their Catholic fellow-countrymen, they were beyond their age in Ireland, but they went no farther in either of their objects than did many of the enlightened and liberal politicians, and some of the ablest statesmen in England. The Report of the Commons' Committee of Secrecy in 1798 has given a version of the foundation and original objects of the United Irishmen. There are few state papers which, assuming a tone of philosophic candor, contains more misrepresentation and direct falsehood than this Report. Speaking of the institution of the society it says:—"The society, under the name of United Irishmen, it appears, was established in 1791; its founders held forth what they termed Catholic emancipation and parliamentary reform as the ostensible objects of their union; but it clearly appeared from the letter of Theobald Wolfe Tone, accompanying their original constitution as transmitted to Belfast for adoption, that from its commencement the real purposes of those who were at the head of the institution was to separate Ireland from Great Britain, and to subvert the established constitution of this kingdom; in corroboration of which your committee have annexed to this Report several of their early publications, particularly a prospectus of the society which appeared in 1791, as also the plan of reform which they recommended to the people."* Tone

* Report, p. 4.

was from the commencement of his career a republican. He conceived that parliamentary reform was unattainable as long as a connection with England existed, and from the earliest period of his political career he struggled, either covertly or openly, to effect a separation between the countries. But at the period of the establishment of the Society of United Irishmen he was nearly alone in these opinions; and it is worthy of remark, that long after the institution of the United Irishmen, he, who was one of its most active founders, continued in the confidence and service of the Catholics. They were not republicans, their principles were monarchical, and it was not until loyalty refused and repelled them, that they unwillingly—and never effectively—joined the republican party. Had Tone made his opinions public, the timid and the servile amongst that body would have shunned him, they would have withdrawn their confidence from him, and avoided his dangerous talents. But he continued one of their most confidential agents and warmest partizans to the very last, and until the pressure of circumstances had made their views identical with his own. The letter which the Report would seem to represent as a public document was a private communication. Its contents could not bind the society, and it is clear they did not, for the principles which he announces to be his were not adopted by them till a much later period. With regard to the prospectus, it has all the appearance of a vulgar artifice, an invention containing what the committee might wish to find in the original constitution of the society, but certainly not containing the open and avowed doctrines on which it acted, up to the dispersion by force of the Dublin branch of the Union in May, 1794. If it be not an invention, yet, no more than Tone's letter, could it bind the United Irishmen. It was not adopted in their meetings, it formed no part of their constitution, it lays down propositions which were far in advance of the acknowledged principles of the first society. Neither does the plan of Reform mentioned in the Report of the Secret Committee, and proposed to the Union, contain any republicanism, nor manifest any desire of effecting a separation from England. Its doctrines have since been recognized as fundamental doctrines of radical reform, have been discussed in the English House of Commons, and, judging from the progressing strength of

popular opinions, are likely to become, at no very distant period, as much a portion of our constitution as the other obnoxious measures proposed by the original society of United Irishmen.* But there is clearer proof of the intentions of that body to be found in the declaration of sentiment made at a meeting convened by the leaders of the United Irishmen, and held in Belfast in December, 1792, when the Union had been some time in operation. At this meeting Samuel Neilson was secretary, and Charles Rankin chairman. A declaration of their political sentiments was made, in which they declare, "that a radical reform in the representation of the people had long been and still is the great object to which all our wishes, all our endeavours tend—the object which we have pursued and which we shall never cease to pursue until it is attained—that to attain it we shall think no sacrifice or risk too great; and that no reform can ever be adequate or useful, satisfactory or just, unless all Irishmen of every description shall be equally and fairly represented."† Out of this meeting grew the assembly of northern delegates at Dungannon, who declared the sense of the people in resolutions expressive of their attachment to the form and original principles of the British Constitution, and of their disapproval of republican forms of government as applied to this country. They proceeded, however, to insist upon a complete parliamentary reform and upon the immediate and entire emancipation of the Roman Catholics, as a measure indispensably necessary to the safety of the country. These were the original views of the United Irishmen—views adopted by the wisdom of our own day, and carried out by the exertions of our ablest statesmen. The history of the times will fully explain how principles like these were relinquished for the republicanism of a later period. In the Memoir delivered to the government in 1798, by Messrs. Emmet, Macnevin, and O'Connor, the following statement of the views of the Union is given:—"The disunion that had long existed between the Catholics and Protestants of Ireland, particularly those of the Presbyterian religion, was found by experience to be so great an obstacle to the obtaining a reform in parliament

* The Duke of Richmond's plan of Reform embraced annual parliaments and universal suffrage. 1 Madd, 1st series, p. 102.

† Madden's United Irishmen, 1 vol., 2d series, p. 82.

on anything of just and popular principles, that some persons, equally friendly to that measure and to religious toleration, conceived the idea of joining both sects in pursuance of the same object—a repeal of the penal laws, and a reform including in itself an extension of the right of suffrage to the Catholic. From this originated the societies of United Irishmen in the end of the year 1791; even then it was clearly perceived, that the chief support of the borough interest in Ireland was the weight of English influence; but as yet that obvious remark had not led the minds of the reformers towards a separation from England. Some individuals had convinced themselves that benefit would result to this country from such a measure; but during the whole existence of the Society of United Irishmen we may safely aver, that to the best of our knowledge and recollection no such object was ever agitated by its members either in public debate or private conversation; nor until the society had lasted a considerable time were any traces of republicanism to be met with there; its views were purely and in good faith what the test of the society avows.”* And such they continued to be until the hopes raised by the King’s Message to the House of Commons recommending the consideration of the subject of reform, and by the limited concessions to Catholics, in 1793, were dissipated by the policy of coercion, which was resumed in 1794, and which, with the slight intermission of Lord Fitzwilliam’s administration, continued to increase in vigour until the rebellion exploded.

It would seem that despotism, frightened by the concessions to the Catholics, in 1793, required the soothing stimulants of strong measures to restore it to its propriety. These concessions were followed hot foot by the Convention bill. It was much to

* Macnevin’s *Pieces of Irish History*, p. 174. The test of the United Irishmen adopted at the first meeting of the Dublin Society, held in the Eagle Tavern, Eustace-street, 9th Nov., 1791, at which meeting the Hon. Simon Butler was chairman, and James Napper Tandy was secretary, was as follows:—

“I. A. B., in the presence of God, do pledge myself to my country, that I will use all my abilities and influence in the attainment of an impartial and adequate representation of the Irish nation in parliament; and as a means of absolute and immediate necessity in the establishment of this chief good of Ireland, I will endeavour as much as in my ability to forward a brotherhood of affection, an identity of interests, a communion of rights, and an union of power among Irishmen of all religious persuasions, without which every reform in parliament must be partial, not national, inadequate to the wants, delusive to the wishes, and insufficient for the freedom and happiness of this country.”

have acknowledged the social existence of the Catholics. They had, according to Grattan, paid two millions of taxes, without a share in the representation or the expenditure; they had discharged the active and laborious offices of life, manufacture, husbandry, and commerce, without those franchises which are annexed to the fruits of industry; and they had replenished the armies and navies of Great Britain without commission, rank, or reward; it was going far then to concede to them the right to elect but not to be elected—it was going far to tender to them the rank of the officer, and the gown of the lawyer. These were partial concessions, and required, to appease the offended spirit of ascendancy, a commensurate quantity of general restriction, and the Convention Act, which, under the pretence of preventing unlawful assemblies, virtually took away the right of meeting altogether, was the palinode composed by parliament to soothe the ruffled spirits of the state. This act aimed directly at the system of delegation which had rendered the name of Dungannon formidable to the ears of power—it destroyed that right of meeting by delegates which ensured security to the liberties of the people against the encroachments of a king or the corruption of a parliament; and it was the subsequent operation of this act against the meetings of the United Irishmen that changed their tactics, and exacted secrecy in their proceedings. The year 1794 was pregnant with coercion. Archibald Hamilton Rowan was convicted of publishing the address of the Union to the Volunteers, and was sentenced to two years' imprisonment and a fine of £500. Mr. Ponsonby's bill for reform was rejected by a considerable majority, and on the debate of that question Grattan went out of his way to attack the United Irishmen. He found no epithet too strong with which to stigmatize the "seditious bunglers"—many of whom afterwards sealed with their lives the sincerity of their political faith. And yet the plan of reform which the society proposed, and which Grattan denounced as levelling and subversive, was one applauded by the English Whigs, and recommended by the high authority of the Duke of Richmond.

Fortified by the rejection of Mr. Ponsonby's bill, and no doubt encouraged by the tone taken on the Whig side of the house with regard to the United Irishmen, the enemies of reform took the active step of dispersing the Dublin society of the Union.

They had given considerable offence to Government by the boldness of their views and the violence of their manifestoes and speeches. It was through their means that the public mind had undergone so beneficial a change relative to the Catholic claims, and it was by the example and advice of the United Irishmen of Dublin that the Catholics themselves had assumed that bold attitude to which the concessions of 1793 were mainly attributable.* These were faults which it appears even patriotism could not forgive, and which drew down the vengeance of power upon the Society. On the 4th of May, 1794, their ordinary place of meeting, the Tailors' Hall, in Back-lane,† was attacked by the police, their meeting dispersed, and their papers seized.

The forcible suppression of the Dublin Society primarily led to the change from open discussion and constitutional propagandism to secret plotting and conspiracy; the effects of which became so fatal to public peace after the recall of Lord Fitzwilliam. When he was sent over here, Government might, most probably, have saved the country all the horrors which followed. "The Parisian massacres of September, 1792, had an immense effect in Ireland; men who were moderate republicans feared to accept freedom accompanied by such horrors; the Catholic aristocracy, always a timid and selfish body, offered to support Government in withholding their own privileges; the Catholic clergy separated in a body from the reformers, and denounced the atheism of France from their altars; if the Government had only united conciliation with coercion, the tranquillity of Ireland would have been ensured. Such was the policy the English ministers first resolved to adopt. Earl Fitzwilliam was sent to Ireland; measures were introduced which at that crisis would have been received with enthusiastic gratitude; but unfortunately the intrigues of party interfered, and to all the causes of discord, which had been accumulating for centuries, were added unexpected triumph in the party of the few, and unexpected disappointment in the party of the many."‡ Lord Fitzwilliam was sent over with full powers to remove Catholic disabilities, and to crush the faction by which this

* The French Republic was every where triumphant in March, 1793, the date of the introduction of the Relief Bill into the House of Commons.

† Madd. U. I., 1st vol. 1 s. 143.

‡ Historical Introduction to Dr. Madden's United Irishmen.

country was misgoverned ; but the impediments he met with disappointed his expectations, and baffled his mission of peace—he looked to the English cabinet for support and received none—the Beresfords triumphed, the Catholics were sacrificed, and he abandoned the Government with mortification and disgust. It has been constantly asserted, that the appointment and the recall of Lord Fitzwilliam were portions of a plan of deep policy on the part of Mr. Pitt, and that his design was to disappoint and disgust all parties, in order that irritated hopes and baffled faction might become the ripeners of rebellion. This is susceptible of argument, and is generally enough believed ;* but it appears too keen and subtle, too full of an impossible foresight, too Machiavellian even for him to whom it is attributed. It is more probable that the minister adopted a plan of concession when the temper of the times seemed to demand it, and that he relinquished it the moment he found himself to be, or imagined that he was, able to rule the country without its aid, and by the assistance of the oligarchic faction which Lord Fitzwilliam sought to destroy. However this may be, and it appears immaterial whether Mr. Pitt's policy was guided by the infamous sagacity thus attributed to it, or that the change of measures arose from the facility of resuming coercion, the result of Lord Fitzwilliam's recall promoted the views of the republican section of the United Irishmen. Gentle measures would have rendered them innocuous ; coercion, producing disappointment and irritation, was the apt agent of their wildest views.

The expectations of the Catholics were immoderately high ; their despondency was proportionately great. They could have been made loyal without difficulty. Loyalty with them was a prompt, not to say a slavish, virtue. The distinguished servility of Lords Kenmare and Gormanstown might not, indeed, have been easily equalled amongst the most ignorant of the democratic portion of their body ; but yet they were open to the seduction of ministerial promise, and would have given a vast deal of practical gratitude for very little practical good. These loyal and servile tendencies received a rough shock from the recall of the popular viceroy, and in the revulsion of disappointed hope the Catholics caught a new fire from the United

* Plowden distinctly assumes it as an uncontrovertible proposition.

Irishmen. From this period both of these bodies, not hitherto much animated by common impulses, began to look to identical means in the prosecution of their objects, and these objects gradually began to define themselves, and assume the form of republicanism and religious equality. Were any thing wanted to drive the Catholics into the ranks of the Union, it was supplied by the crimes of the Orangemen, committed against the unfortunate and proscribed members of that religion. They were made the victims "of a persecution conceived in the bitterness of bigotry, carried on with the most ferocious barbarity, by a banditti, who, being of the religion of the state, had committed with the greater audacity and confidence the most horrid murders, and had proceeded from robbery and massacre to extermination."*

In this state of affairs, so promising to the friends of revolution, the change of the United system took place. The Report of the Secret Committee says, "For the first three years their attention was entirely directed to the engaging in their society persons of activity and talent, in every quarter in the kingdom; and in preparing the public mind for their future purposes by the circulation of the most seditious publications, particularly the works of Thomas Paine.† At this time, however, the leaders were rather cautious of alarming minds not sufficiently ripe for the adoption of their principles by the too open disclosure of the real objects they had in view. In 1795 the test of the society underwent a striking revision; the words in the amended test stand 'a full representation of all the people,' omitting the words 'in the Commons House of parliament,' and the reason for which has been admitted by the members of the executive, examined before your committee, to be the better to reconcile reformers and republicans in a common exertion to overthrow the state."‡

The three gentlemen referred to, Messrs. Emmet, Macnevin, and O'Connor, in their memoir, seem to contradict the latter part of this statement, and one would probably attach more importance to their account than to a document like this state paper,

* Grattan.

† These works were circulated largely by the Whig party in England, under the sanction of Fox and Erskine, and the other eminent leaders.

‡ Report, p. 5.

drawn up and prepared as it is with profound skill and commensurate falsehood. Even at this period, when the Union had commenced to be a private association, meeting under the sanction of an oath, and with a test amended in the way that it has been mentioned, the great body of them, so far from contemplating revolution as their favored alternative, would gladly have accepted a reform in parliament, and the removal of Catholic disabilities as the fulfilment of their highest expectations; such is at least the evidence of three of their ablest and most trusted leaders. After having stated that the suppression of the Dublin society of United Irishmen, and the other stringent measures had led to the formation of new bodies, preserving the popular name of United Irishmen, but differing in their plan and with an amended test, the memoir proceeds, "the first of these societies was, as we best recollect, in the year 1795. In order to secure co-operation and uniformity of action, they organized a system of committees, baronial, county, provincial, and even national; but it was long before the skeleton of this organization was filled up. While the formation of these societies was in agitation, the friends of liberty were gradually, but with a timid step, advancing towards republicanism; they began to be convinced that it would be as easy to obtain a revolution as a reform, so obstinately was the latter resisted, and as this conviction impressed itself on their minds they were inclined not to give up the struggle, but to extend their views; it was for this reason that in their test the words are 'an equal representation of all the people of Ireland,' without inserting the word 'parliament.' The test embraced both the republican and the reformer, and left to future circumstances to decide to which the common strength should be directed; but still *the whole body we are convinced would stop at reform.*"* It is not necessary for me to give the details of the change in the civil organization which took place in the Union, and which was completed on 10th May, 1795. The reader will find them in the evidence of Thomas Reynolds, upon the trials of M'Cann, Byrne, and Bond.† In addition to the change of the test already alluded to, an oath of secrecy was added; and after the meeting of the executive directory of the society, May, 1796,

* Macnevin's Pieces of Irish History, 176. And see the cross-examination of Reynolds on Bond's trial.

† See post.

in which it was resolved to seek for foreign aid, the military organization grew out of the civil system.*

The existence of the military organization was well known to Government, from April 14th, 1797, by means of Nicholas Maguan, a traitor, who was colonel in the military system. Dr. Macnevin says the organization commenced to be military in the latter end of 1796, and we find this Maguan communicating the details of the Provincial meeting of Ulster, with the returns of arms and ammunition, of the date of the 14th April, 1797, and thenceforward until the 31st May, 1798. This Maguan's secret information is thus prefaced in the Appendix of the Secret Committee of the Commons:—"The information contained in this number of the Appendix was received from Nicholas Maguan, of Saintfield, in the county of Down, who was himself a member of the Provincial and County Committees, and also a Colonel in the military system of United Irishmen.† He

* Dr. Macnevin gives the following account of the system, in his examination before the Secret Committee of the House of Lords, on the 7th August, 1798:—

Q. When did you become an United Irishman? A. About September or October, 1796, I became a member of the close society of United Irishmen; it consisted of societies, at first, composed of thirty-six members, afterwards these societies were reduced to twelve members; each society of twelve chose a secretary, and generally a treasurer.

Q. What was the next higher society? A. The Secretaries of five societies formed a lower Baronial Committee; out of each of the lower Baronial Committees one person was chosen to be a member of the upper Baronial, each of the upper Baronials consisted of ten members thus chosen. The next superior committees were, in populous towns, District Committees; and County Committees, in counties; these were composed of one member elected from each Baronial. The next superior Committees were the Provincial Committees, composed of two members, sometimes three, elected from each County Committee.

Q. How was the Executive chosen? A. Each Provincial Committee elected five persons by ballot, the secretary examined the ballots, and reported to the persons elected their appointment; but made no report of the election to the Provincial, who were thus kept in ignorance of the persons who composed the Executive. The Executive had the command of the whole body thus organized.

Q. What was the organization originally? A. At first it was purely a civil organization; but I believe it was military in Ulster, about the latter end of 1796.

Q. What was the nature of the military organization? A. The Secretary of the society of twelve was the petty officer, that is, Serjeant or Corporal; the Delegate of five societies to a lower Baronial was usually the Captain, and thus had sixty men under his command; and the Delegate of ten lower Baronials to the Upper or District Committee was usually the Colonel, and thus a battalion was composed of six hundred. The Colonels of each county sent in the names of three persons to the Executive, one of whom was appointed by the Executive Adjutant-General of the county, his duty was to receive and communicate all military orders from the Executive. (App. to Report of the Commons' Committee, xxxi.)

† Dr. Madden gives an account of this informer which would lead us to suppose that the representation of his being a colonel in the military system was a falsehood. "This Magin, (for such was his name) of Saintfield, in the county of

was present at each of the meetings, of which an account is here given; and from time to time, immediately after each meeting, communicated what passed thereat to the Rev. J. Cleland, a magistrate of that county. The person giving this information has since verified it upon oath, before the Committee of the Lords, and Mr. Cleland has likewise sworn that the papers presented to the Committee contain the exact information so communicated to him by Maguan." These papers commence with a return of the arms and ammunition in the possession of the Union, in the ten northern counties, and is dated the 14th April, 1797. There is a great mass of information upon the numbers, organization, and objects of the Union. The various meetings of the northern counties, the names of the members attending them, and the business transacted are given in detail, and extends from the above date to the 31st May, 1798, so that for one whole year the Executive of the country were intimately acquainted with the conspiracy against them in the North of Ireland; at any moment they could have arrested the active members of the Union, and crushed its designs in that part of the country in which republicanism could count its staunchest and most numerous friends, and if the government had proceeded with vigor there, they would have found little difficulty in baffling the efforts of treason in the other provinces. The information, too, which they obtained through the profligate agency of this double traitor, was of so full and ample a nature as to have enabled them to prosecute their efforts successfully, in utterly destroying the organization, detecting the leaders, and

Down, was a poor man, holding a few acres of ground in the neighbourhood of Saintfield. If the services rendered by Magin are to be estimated by the amount of their reward they must have been considerable. The following items, at least, will give some idea of the estimation in which they were held—

August 16, 1798	J. Magin,	...	...	£700	0	0
" 17, Do.	Do.	...	...	56	17	6

Notwithstanding the immense sum of money lavished on him—from being an industrious, honest man, previously to his new pursuits as an informer, he became an improvident, indolent, dissipated person, addicted to gambling, and in the course of a few years his easily gotten wealth was gone, and he had to earn his bread in the neighbourhood of Belfast, as a common working gardener; and in this employment he died there a few years ago."—Madden, 1 vol. 1 series, p. 327. The list from which Dr. Madden has given the above items, and which he has published in the appendix to his interesting volumes, is a most extraordinary document. From August, 1797, to Sept., 1798, government allocated £38,419 8s., to the payment of every ruffian who had a conscience and a country to sell, or a friend to betray. There are some names in the list which will add new honors to the proudest families in the land. The publication is a benefit. It may serve to prevent the recurrence of the practices it records.

bringing the guilty parties to justice. It is difficult to understand the policy which permitted a treasonable conspiracy to proceed to the most formidable length, to organize a country, to spread the ramifications of discontent through a whole people, at the same time that the government of the country were well aware of its existence, watched its progress, and could have crushed it at a blow. It is not too much to say that solid reasons are required to justify this conduct, and to exonerate the persons who then governed the country from being justly charged with the brutal wisdom of permitting a whole people to become implicated in crime, for the sinister purpose of wresting from them, amidst the horrors of an unsuccessful rebellion, their national independence and honor. This is a charge not lightly to be made, and one that we should be slow to believe. But there are circumstances, which they, who defend the conduct of the government of that day, are called upon to explain, and the satisfactory explanation of which is necessary to their exculpation. We are not to forget that the Rev. William Jackson, an emissary of France—a man chosen for the guilty object of disseminating treason, and scattering the seeds of rebellion amongst a loyal people—was permitted to visit this country, although his objects were known to the English minister, while he was in London on his way from Paris. He was guilty of high treason in the capital of Great Britain—that treason was known to the government—the object of his mission was detailed to them. Yet he was left free to proceed to Ireland to tender the assistance of a foreign power for the purpose of overthrowing the established government. There was no impediment offered to him. He was not made—as in mercy to the people of Ireland he ought to have been made—a victim to his own unconsummated treason. He was allowed to go amongst a people—at that time at least untouched to any great extent by what were called “French principles”—the permitted apostle of these principles, the corrupter, and the tempter. Coupling this with the other no less undoubted fact, that from the moment the military organization of the Union commenced, the government had the most accurate information of its whole details, it is difficult to conceive that rebellion was not in their eyes, in some sort, an object to be attained—not a calamity to be avoided. And if such a policy were pursued, it is not too much to lay at the

door of the men who pursued it all the crimes and outrages of 1798. Mr. Curran, in his interesting biography of his father, whilst he appears to doubt that the object of government was to "foment conspiracy in order that the excesses to which it would lead, might reconcile the nation to a legislative Union;" yet adds, "that, however vulgar and improbable the supposition may appear, it is still perhaps the only one that can satisfactorily explain the inconsistencies and infatuation of their councils."*

The change in the system of the United Irishmen by which a military organization was engrafted upon the civil, and with which it has been seen that the Government was perfectly acquainted, took place in the latter part of the year 1796, and was hastened by several important events which occurred during that year. The vigorous pressure of Government at home and the arrival of the French in Bantry Bay, in December, 1796, tended equally to the same object. By the former the people were driven to despair, and by the latter the ruling faction was at once terrified and enraged. The severity of Government increased the popular resentment, and the fear and hatred of France gave new vigour to the system of coercion and persecution. The Insurrection Act (Feb. 1796), by which, to use the words of the Secret Committee, "the Lord Lieutenant and council were enabled upon the requisition of seven magistrates of any court assembled at a session of the peace to declare the whole or any part thereof to be in a state of disturbance, within which limits the law, giving increased power to the magistracy, was to have effect," was passed through Parliament with little opposition except from Grattan, Ponsonby, and Lord Edward Fitzgerald. This bill was designated by Mr. Ponsonby "the grave of the Constitution." It might more correctly be termed 'the cradle of rebellion.' It revived the ancient despotism of the curfew; it enabled a partizan and factious magistracy to put their country outside the law, to send obnoxious or suspected persons on board the fleet, and under its sanction and the pretence of searching for arms, to force open the houses of the peasants at any hour of the day or night. An indemnity act had previously passed, and though it did not provide for the commission of future acts of violence, it bestowed so large a measure of

* Curran's Life. 1 Vol. p. 374.

oblivion for the past, that the people might well suppose that no crime could be committed against them. If we are to credit the testimony of Grattan and Ponsonby, the prisoners were taken from goal just before the assizes, when they ought to have been tried, and sent on board the King's ships; and the magistrates on conference together were in the habit at their pleasure of arresting and dragging the peasants from their beds at midnight, and transporting them without trial of any kind. Lord Carhampton was distinguished for the same infamous lawlessness. For crimes like these against the peace of the community and the constitution of the country, the parliament provided a wholesale indemnity.

These two measures—one of them arming the magistracy with extraordinary powers, and the other indemnifying them for gross misconduct and oppression, and thereby indicating the impunity likely to attend the repetition of their insolent disregard to law—were provocatives, unhappily too strong for the uneasy spirits of the people. The Catholic Defenders complained, and it would appear but too justly, that the provisions of the Insurrection Act were exclusively aimed at them, and were inoperative against the Peep-o'-day-boys, whose outrages had produced their retributive crimes. They felt themselves exposed to the brutal and inhuman persecution of "an atrocious banditti, whose barbarity exceeded that of modern times, and brought back the recollection of the ancient ferocity and bloodshed." They had no hope from Government; it was the powerful ally of triumphant faction; and if thenceforward they became ready for any change, it was because no change could make them worse.

Following upon these acts of Parliament, bills were brought in for the suspension of the Habeas Corpus and for the establishment of the Yeomanry. The vigor of the Executive equalled that of the Parliament. Proclamations were issued with various preambles but with one intent—to arm the Magistracy and Yeomanry with unlimited power over the lives, property, and liberties of the people.

Lord Camden's proclamation of 17th May, 1797, giving increased powers to the military, and declaring that the civil authority was ineffectual to preserve the public peace, let loose upon the country the furious passions of an unbridled soldiery. The letters of Mr. Pelham the secretary to the commander-in-chief

the Earl of Carhampton (whose name acquired fresh historical celebrity during this period) imparted to him unrestricted power over the habitations and persons of the people.* The military were ordered to act without waiting for any directions from civil magistrates in the dispersion of all meetings which they might consider tumultuous, unlawful, or threatening to the public peace. The houses of the living and the coffins of the dead were alike violated in the pursuit of hidden arms. Gay meetings were dispersed by the armed rabble who overran the country. Nor was the sombre march of death left uninterrupted. The Executive had detected organization in the funeral train and arms in the coffins: and the luxury of joy and sorrow was equally prohibited by the martial discretion which then governed the people with a rod of iron. In fine, the country was a pandemonium of military demons. The houses of the peasantry were broken open at night—men were whipped, hanged, or shot at their doors without a pretence or shadow of trial—the cabins of humble industry were set on fire by drunken military mobs, and the inhabitants bayonnetted or shot as they sought to escape from the flames of their own homesteads. Lust, rapine, and murder rushed through the land in appalling companionship;—and yet, speaking of the results of this proclamation, the Report of the Committee calls it a measure of “mercy and warning” and is surprised that it was thrown away upon the rebellious obduracy of an affrighted, tortured, maddened population!

It certainly was not thrown away upon them. Its fruits were visible enough in the enormities of the rebellion, which was hastily advancing, and which only waited for a few more “well-timed measures to procure an “explosion.”† One of these measures, which deserve notice for many reasons, was the death of William Orr. His conviction was not that of a common criminal, which might be either the just retribution of crime, or the mistaken severity of angry justice. It was felt to be a deliberate murder perpetrated by the government of the day for its own purposes on an innocent man. It was looked upon as a national calamity: for Orr was popular beyond his sphere,

* Pelham's Letter, Report of, See Com. App. xi.

† Lord Castlereagh asked one of the state prisoners “would not the Union have become stronger but for the means taken to make it *explode*?” Pieces of Irish History, p. 203.

and respected through the country, as one well endowed with superior qualifications of mind and body. His alleged crime was the administering the United Irishman's oath; and the evidence against him was that of a perjured murderer. He was arraigned in October, 1797, to plead to an indictment under the Insurrection act. He was found guilty by a drunken jury, three of whom made affidavits of their drunkenness before the judge who tried him—he was recommended to mercy, respited three times, and hanged.*

From the moment of this judicial murder, until the extinction of the rebellion, the United Irishmen were the peculiar objects of the vengeance of the Executive. The attempt of the French at Bantry Bay stimulated the energy of Government; and the conviction and execution of Orr preceded but by a few months the arrests of the Leinster delegates, the Dublin Executive, and the second Directory.

The former were arrested at the house of Oliver Bond, in Lower Bridge Street, on the 12th of March, 1798. The particulars of their arrest will be found in the Evidence of Swan, who was one of the confidential agents of the Castle in those days.† Fourteen of the delegates fell into the power of the Government, all of whom were returned from localities in Leinster, and the principal persons amongst them were William Michael Byrne, and John M'Cann. Oliver Bond was arrested at the same time.

These arrests were followed by others still more important. On the same day, Emmet, Macnevin, Jackson, and Sweetman, the Leinster Executive, fell into the power of Government, O'Connor having been previously, for a considerable period, a prisoner in the Birmingham Tower in the Castle. The arrest of these gentlemen, deprived the Union of its ablest leaders. Neilson and Lord E. Fitzgerald were the only persons now left to carry their designs into execution, excepting the two unfortunate brothers Henry and John Sheares, who were chosen to fill the vacancies, occasioned by the arrests of the members of the Executive.‡

* "Remember Orr" was a watchword of rebellion, and medals were struck with his name.

† Trial of M'Cann, post, p.

‡ Madd. United Ir., 2 v., 2 series, p. 293.

The new Directors fixed upon the 23d of May for the general rising ; but the hopes of success had gradually grown less with delay and disappointment, and the rebellion might have been said to have been crushed before it commenced. The last and the greatest blow of all was the arrest of Lord Edward Fitzgerald, on the 19th of May, followed by that of the Sheareses, on the 21st, and of Neilson, on the 23d.

“ When all their secrets were betrayed, all their measures known, and all their leaders seized, the United Irishmen allowed the rebellion to begin. It had been too long languishing and uncertain to inspire the people with confidence or enthusiasm ; it was ill concerted, worse directed, received with coldness by some and terror by others ; there was division between its leaders, there was disunion amongst its followers, it had neither guidance nor support. In fact, it might have been said to have been dead before its birth, had not the Government forced it into premature existence, by the stimulants of whipping and free quarters.”* Similar testimony of the efficacious measures of Government to elaborate rebellion, is borne by the Report of the Secret Committee. This document says—“ It appears that from *the vigorous and summary expedients* resorted to by Government, and *the consequent exertions of the military*, the leaders found themselves reduced to the alternative of immediate insurrection or of being deprived of the means on which they relied for effecting their purpose ; and that to this cause is exclusively to be attributed that premature and desperate effort, the rashness of which has so evidently facilitated its suppression.”†

In the notes of Mr. Emmet’s examination before the Committee of the Lords, August 10, 1798, the following question and answer appear :—

Lord Chancellor : Pray, Mr. Emmet, what caused the late insurrection ?

Emmet : The free quarters, the house burnings, the tortures and the military executions in the counties of Kildare, Carlow, and Wicklow.

The evidence of Mr O’Connor is still fuller on this subject. In his examination before the Commons’ Committee of Secrecy, he was asked a similar question :

Q. How was the late rising occasioned ?

* Introduction to Madden’s United Irishmen. † Rep. p. 30.

A. I have already told you how : from the beginning of the French Revolution the measures pursued by the British ministry and the Irish Government have worked up the minds of the people of Ireland to their present highly irritated state—at one time raising their hopes—at another time blasting these hopes ; at one time promising Emancipation and Reform—and at another time resisting both with fire and sword, burning houses, hanging, lashing, and torturing ; means unjustifiable to support any system, and which a just Government could not for one instant stand in need of. These no human patience could endure, and yet (from a conviction that they were practised to goad the people to a premature attempt to put down their oppressors) as long as I could remain I used every means in my power to endure a little longer ; but when, to avoid being dispatched, I was forced to fly, those in whose hands the Executive power of the Union was vested yielded to the pressing solicitations of the people of the most oppressed parts, who were desirous to risk their lives in order to rid themselves of the cruelties they hourly experienced.

Dr. Macnevin gives the same testimony in his examination (August 8, 1798) before the same Committee :

Speaker : Pray, sir, what do you think occasioned the insurrection ?

Macnevin : The insurrection was occasioned by the house-burnings, the whippings to extort confession, the torture of various kinds, the free quarters, and the murders committed upon the people by the magistrates and the army.

Speaker : This only took place since the insurrection.

Macnevin—It is more than twelve months since these horrors were perpetrated by the Antient Britons about Newry ; and long before the insurrection, they were quite common through the counties of Kildare and Carlow, and began to be practised with very great activity, in the counties of Wicklow and Wexford.

Corry and Latouche—Yes, a few houses were burned.

Macnevin—Gentlemen, there were a great deal more than a few houses burned. * * * *

Lord Castlereagh—Were not the different measures of the Government, which are complained of, subsequent to various proceedings of the United Irishmen ?

Macnevin—Prior, my Lord, to most of them ; if your Lordship desires it, I will prove by comparison of dates, that Govern-

ment throughout, has been the aggressor. (His Lordship was not curious.)

There can be no difficulty in interpreting the phrases, "the vigorous and summary expedients resorted to by Government," and "the consequent exertions of the military."

By a proclamation of the 30th March, the country was declared in a state of rebellion. This was certainly not the truth, for no blow had as yet been struck, nor any rising taken place. The country was every where lighted with the flames of the houses of the people. The lash resounded on all sides; half strangulation, pitch caps, and triangles were in use through the different counties, and it is said, on competent authority, were most used where the people were least disaffected. But as yet, they had endured, nor had they, at the period of the proclamation, been goaded into open resistance by the mistaken severities of the Government party. The readers of the history of that day, will well remember the memorable description of the army, given by the gallant and humane Abercrombie, "They were, from their licentiousness, formidable to every one but the enemy." It is difficult, in one glance, to comprehend the whole picture of misery in which they bore such conspicuous parts. We may take, as an example of the result of letting them loose upon the people, the facts connected with the rebellion in Wexford. The movement there was isolated; it was not in connection with that going on elsewhere; it was forced into being by the scenes of tremendous cruelty which took place in a county not sworn in the united system, not discontented, and not disloyal. But the fact of its peaceful and loyal tendencies had no effect in preserving its inhabitants from the visitation of free quarters, and all the consequent evils, and as though to justify the proclamation of the 30th March, Wexford was subjected to the discretion of the soldiers. "They became masters of every house in the country, the real owners were obliged to procure them every necessary they thought proper to demand, and as their will was then the only law, and a very imperious and tyrannical law it was, the people dared not, except at the risk of their lives, complain of any outrage or brutality of which their savage disposition prompted them to be guilty. The inevitable consequence was, that such horrid acts were perpetrated, such shocking scenes were exhibited, as must

rouse the indignation, and provoke the abhorrence of all not dead to human feeling, or not barbarised by unnatural hatred of their fellow creatures.”* Wexford was unvisited by the Orange system until April, 1798, and it was, therefore, untainted by that spirit of insurrectionary fury which was sure to be evoked wherever the principles and practices of the Orangemen existed. The truth is, the people believed that the Orange system was formed for their extermination. It was a mistake pregnant with evil, for the spirit of resistance which it created was furious and sanguinary. And though, doubtless, it was imputing to that system an object which it would be difficult to bring home to it, the conduct of the Orangemen furnished some excuse for the error. With Lord Kingsborough and the North Cork Militia, Orangeism became known, for the first time, in Wexford, in April, 1798, and with the loyalty of the system, some other attendant blessings were bestowed upon the population, which worked out their due effects in the following months. “It is said that the North Cork Regiment were the inventors, but they certainly were the introducers of the pitch cap torture into Wexford. Any person having their hair cut short (and therefore called a Croppy, by which appellation the soldiery designated a United Irishman,) on being pointed out by some loyal neighbour, was immediately seized and brought into a guard-house, where caps, either of coarse linen or strong brown paper, besmeared inside with pitch, were kept ready for service. The unfortunate victim had one of these, well heated, compressed on his head, and when judged of a proper degree of coolness, so that it could not be easily pulled off, the sufferer was turned out amidst the horrid acclamations of the merciless torturers, and to the view of vast numbers of people who generally crowded about the guard-house door, attracted by the afflicting cries of the tormented. Many of those persecuted in this manner, experienced additional anguish, from the melted pitch trickling into their eyes. This afforded a rare addition of enjoyment to these keen sportsmen, who reiterated their horrid yells of exultation, on the repetition of the several accidents, to which their game was liable on being turned out, for, in the fury and hurry of

* Hay's History of the Rebellion. This gentleman was an eye witness of what he states.

escaping from the ferocious hands of these more than savage barbarians, the blinded victims frequently fell, or dashed their heads against the walls in their way. The pain of disengaging this pitch cap from the head, must be intolerable. The hair was often torn out by the roots, and, not unfrequently, parts of the skin were so scalded or blistered as to adhere to, and come off along with it. The terror and dismay, that these outrages occasioned, are inconceivable. A serjeant of the North Cork, named *Tom the Devil*, was most ingenious in devising new modes of torture. Moistened gunpowder was frequently rubbed into the hair, cut close, and then set on fire. Some, while shearing for this purpose, had the ears nipped off; sometimes an entire ear, and often both ears were completely cut off, and many lost part of their noses during the like preparation. But, strange to tell, these atrocities were publicly practised, without the least reserve, in open day, and no magistrate or officer ever interfered, but shamefully connived at this extraordinary mode of quieting the people. Females were also exposed to the grossest insults from the military ruffians. Many women had their petticoats, handkerchiefs, caps, ribbons, and all parts of their dress that exhibited the shade of green, (considered the national colour of Ireland,) torn off, and their ears assailed by the grossest ribaldry.”*

All the new devices of cruelty, it is observable, were of Irish origin. The spirit of Orangeism was inventive; for whilst the mercenary soldiers of England contented themselves with the hackneyed crimes of lust and murder, the Irish Orangeman employed a genius, versed in torment, in the discovery of something new and striking in oppression. If the reiteration of scenes and deeds like these were successful in rousing the hitherto tranquil county of Wexford, one may imagine that in other places, where the United Irishmen had succeeded in extending their organization, they were eminently adapted to drive the people into resistance. Loyalty was a virtue whose fruits were burning houses, whippings, and half hangings. Many wretches were taken from their cabins, strung up as if to be hanged, indulged in the first agonies of strangulation, and

* Hay's Irish Rebellion, and see Life of Sampson in Madden's U. Irishman, 2 v. 2 series, 353.

then respited for the purpose of giving information, if they possessed it, or inventing it, if they did not. Men whose trades brought them amongst the people, such as carpenters and smiths, were selected, by virtue of their calling, as fit objects for experimental torment, and many of them expired under the merciless lash of the persecutor, or were shot by the ruthless yeoman. A Protestant historian of the rebellion furnishes us with the following details—"I now heard of many punishments of suspected persons, both by flogging and strangulation, being put into execution in the barrack yard in Ross, to extort confessions of guilt. There were two of these victims brought from the barrack yard to the Court House, to undergo a repetition of former punishments. One of them of the name of Driscoll, was found in Camlin Wood, near Ross, where he said he generally wandered as a hermit; upon him were found two Roman Catholic prayer books, with which, it was supposed, he administered oaths of disloyalty; he had been half strangled three times, and flogged four times during confinement, but to no purpose; his fellow-sufferer was one Fitzpatrick, of Dunganstown, near Sutton's parish, he was a schoolmaster, he was not strangled, however, but flogged with great severity, and it was not with dry eyes that I saw the punishment inflicted upon this humble pioneer of literature. About a month after the battle, both these men were tried before General Cowley, and matters appearing no farther against them than I have stated, they were liberated from a close and filthy confinement; the General presented both with a small sum of money, expressing a good-natured concern that he could not then give them greater pecuniary assistance."* The Rev. Mr. Gordon, a clergyman of the Established Church, who resided near Gorey, in Wexford, and who was a witness of the various extraordinary facts contained in his history, affords us further unimpeachable testimony in aid of the statements made by Messrs. Emmet, O'Connor and Macnevin—"Whether an insurrection, in the then existing state of the kingdom, would have taken place in the county of Wexford, or, in case of eruption, how far less formidable and sanguinary it would have been if no acts of severity had been committed by the soldiery, the yeomen, or their supplementary associates,

* Alexander's Account of the Rebellion, p. 28.

without the direct authority of their superiors, or command of the magistrates, is a question I am not able positively to answer. In the neighbourhood of Gorey, if I am not mistaken, the terror of the whippings was, in particular, so great, that the people would have been extremely glad to renounce, for ever, all notions of opposition to Government, if they could have been assured of permission to remain in a state of quietness. As an instance of this terror, I shall relate the following fact—‘ On the morning of the 23d of May, a labouring man, named Denis M^cDaniel, came to my house with looks of the utmost consternation and dismay, and confessed to me that he had taken the United Irishman’s oath, and had paid for a pike, with which he had not yet been furnished, nine pence half-penny, to one Kilty, a smith, who had administered the oath to him and many others. Whilst I sent my eldest son, who was a Lieutenant of Yeomanry, to arrest Kilty, I exhorted M^cDaniel to surrender himself to a magistrate, and make his confession; but that he positively refused to do, saying that he should, in that case, *be lashed to make him produce a pike which he had not, and to confess what he knew not.* I then advised him, as the only alternative, to remain quietly at home, promising that if he should be arrested on the information of others, I would represent his case to the magistrates. He took my advice; but the fear of arrest and lashing had so taken possession of his thoughts that he could neither eat nor sleep, and on the morning of the 25th he fell on his face and expired, in a grove near my house.’”*

We may imagine the frequency and horror of that punishment, the mere contemplation of which, could produce such an effect; and we may take this single figure, as a correct specimen of the national grouping of victims and tormentors, which shocked the senses of humanity in that memorable year. These were the practices—monstrous punishments, unheard of in civilized Europe, reproductions of the cruelties of ancient times, or copies from the despotisms of Asia—of Irishmen on Irishmen, at the bidding, and to serve the policy of the English Minister. This mangling of the body, this sport extracted from the agonies of the sufferer, from his blinded eyes or tortured back—this base disregard to female honor, did more to produce rebellion than all the plottings, conspiracies, and sedition of the day.

* Gordon’s History of the Irish Rebellion, p. 87.

It is fortunately no part of the design of this Introduction—which does but briefly indicate the facts, with which the following trials are conversant—to enter upon a detail of the scenes of 1798. Remembering the rebuke of Abercrombie to the army, we may easily conceive that every atrocity, which could be devised and executed by licentious power, was committed by them, and we are not, therefore, to be much astonished at the dreadful retaliation of a peasantry, which had to exact vengeance for the murder, or violation, of the dearest relatives and friends. If it were worth argument in this place, it would be easy to show that the savage acts of the people were, all of them, subsequent to some inhuman and wholesale cruelty, practised by the yeomen or soldiery; and that, detestable as the conduct of the rebels was, it was retributive, not aggressive. But there are better lessons to be learned from the history of that day than those taught by faction and party hatred. The people were driven into a rebellion in which—by death in the field, on the gallows, or by torture—seventy thousand men perished. Ireland was left in a state of exhaustion, and not of tranquillity; of rancorous hatred to men who used their victory as a scourge; so deeply, so universally disaffected as to require, ever since, with the exception of a short period, the presence of a large army to preserve an unwilling dependency to the Crown of England. The rebellion might have been avoided: the concession of favours, which have since been yielded to the people, would have satisfied their wishes, and completely baffled the designs of the republicans. Concession was refused, coercion deliberately adopted, and the Government trusted to the bloody experiment of unsuccessful rebellion, to enable them to crush the spirit and complete the subjection of the people. The experience of times near our own, is sufficient evidence of the failure of the attempt.

The events of the rebellion passed rapidly and bloodily on. Two months' hard fighting demonstrated the superiority of military organization, over the undisciplined courage of the people. The Northern insurrection terminated with the abortive battles of Antrim and Ballinahinch; the Leinster rebellion, after a brief but desperate career, was crushed at Vinegar Hill, and with the capitulation of Ovidstown, on the 12th of July, the assemblages of armed masses may be said to have ceased. The last affair was followed by the massacre of a body of the United

Irishmen who had capitulated, on the Rath of the Curragh of Kildare. This monstrous act was committed, if we are to believe the authorities on the subject, and I see no reason to doubt them, by the command of Major-General Sir James Duff, and principally by the agency of Captain Bagot's yeomanry cavalry, and Lord Roden's Foxhunters. The same cruelty which had forced the rebellion into being, attended it in all its stages, and was active long after all hope had departed from the rebel camps. There never was an insurrection punished more inhumanly. The despatches of the military authorities are full of details of hangings, shootings, and burnings, whose flippancy affords too pregnant proof of the frequency of savage punishment. No quarter was given in the field, and the fate of any prisoner, brought before the court-martials, was assured and certain. Hurried trial and instant conviction were followed by execution in every case. Never did justice assume so hideous an aspect. Military tribunals of furious partizans, sat in every quarter, and sent thousands to instant death. The infliction of torture was unremitting; persons of rank and station were executed without trial, or with the barbarous mockery of trial which is furnished by drum-head judicature. Men lost all reason, all humanity; the people groaned under the frightful infliction of a terrible military tyranny.

When the rebellion was virtually over, but whilst court-martials, and special commissions were still doing their duty, it occurred to some of the state prisoners that an useful and honorable arrangement might be made with Government, by which a stop should be put to the effusion of blood, a general amnesty be procured, and the people be restored to the benefits and protection of the constitution. These gentlemen, feeling that they participated with Government in the guilt of producing the insurrection, and affrighted, not so much at their own possible fate as at the ghastly spectacle of a bleeding country, were anxious, if it could be done, to restore peace, and to reconcile the two contending parties. An opportunity soon presented itself. The Executive had been well aware of the plans of the United Irishmen, and of their intercourse with France. They possessed a great mass of information upon the whole system of the Union, its members, its projects, and its intrigues, and they were anxious to impart the knowledge they possessed

to the public; but there were difficulties in their way—their information was obtained from foreign and domestic treachery, their home agents were vulgar tools, and their names would have given but little authority to their statements, and the Government were bound by agreement not to disclose those parties connected with France who had betrayed at once the secrets of their own Government and of the Irish Union. Speculation has been busy as to them; but it is as vain as useless to seek to penetrate the secret of the treachery, by whose active agency, the English Minister became acquainted with the negotiations of the United Irishmen with foreign powers. It must have been deep, and extensive. The Government being thus anxious to give all the information they possessed to the world, and being at the same time deterred from proclaiming its sources, it became an object with them to obtain from the leaders of the Union, then in prison, a full disclosure of its history, organization, and foreign negotiations; by which means they would at once possess the most accurate information, on the best possible authority, and be enabled to make whatever use they pleased of it. Various motives operated with Government in their anxiety upon this matter. They, no doubt, wished to terrify their dependents by a display of the vigorous and well-concerted measures which had been taken to subvert their authority, and to shake off the English yoke;* and they wished to alarm the English people by a detail of the external relations of the Union. Proposals were, with these objects, made to the state prisoners in Dublin, and were accepted by them. They saw their countrymen daily devoted to death, whilst Ireland gained nothing by the sacrifice, and they entered at once into a treaty, whose faithful fulfilment was to rescue their country from civil and military execution, and to restore to the people of Ireland the protection of the civil law. The idea of this compact was first started in the middle of July. John and Henry Sheares had been executed; Michael William Byrne was on his trial and there was no doubt of its issue, Oliver Bond was to be tried next, and the special commission which was sitting was proceeding surely and rapidly in its work. Pending the arrangement of the treaty, on the very day on which it was all but completed, and contrary to its spirit,

* Account of the Compact in Madden, 2 vol. 2 series, p. 103.

Byrne was executed. The assent of Government and the signature of the state prisoners were, however, finally obtained on the 29th of July. "When it was proposed to make a draught of the stipulations, Lord Castlereagh laboured to produce a persuasion of its being superfluous, since every thing was so well understood, and would be honorably construed. The deputies of the prisoners, however, thought it their duty to commit the substance, at least, to writing, and drew up a paper which must be considered as a memorandum, and not a detail of the agreement. The following is that paper:—'That the undersigned state prisoners in the three prisons of Newgate, Kilmainham, and Bridewell, engage to give every information in their power of the whole of the internal transactions of the United Irishmen; and that each of the prisoners shall give detailed information of every transaction that has passed between the United Irishmen and foreign states; but that the prisoners are not, by naming or describing, to implicate any person whatever; and that they are ready to emigrate to such country as shall be agreed upon between them and Government, and give security not to return to this country without the permission of Government, and not to pass into an enemy's country—if, on doing this, they are to be freed from prosecution, and also Mr. Bond be permitted to take the benefit of this proposal. The state prisoners also hope that the benefit of this proposal may be extended to such persons in custody or not in custody, as may choose to benefit by it.'"

By the fulfilment of this compact, on the part of the leaders of the United Irishmen, the Government gained their object. They were enabled to conceal the real channels of their previous information; and to put forward the state prisoners, to vouch for what they wished to make publicly known, and which they could thus authenticate. They wished to escape from, or to palliate the infamy of their conduct—their house burnings, torturings, arbitrary banishments, and licensed murders, by proving that the United Irishmen entertained the idea of effecting a separation from England, a design which the favourers of English power at that period would consider as sufficient provocation for the violation of all principles, and the infliction of all

* Macnevin's Pieces of Irish History, p. 157.

horrors.* This they effected to the fullest extent. The leaders were examined before the Committees of the Lords and Commons, and garbled extracts of their evidence, were published by Government. The case was made out to the satisfaction of its partizans, and a load of obloquy thrown upon the unfortunate gentlemen, who, in thus submitting to the searching examination of the Committees, and undertaking to transport themselves from their country, expected to have been instrumental in restoring peace, and stopping the effusion of blood. It was not their fault that they did not succeed in their design.

It may be now proper to consider, for a moment, what was the object of this treaty, what conditions it contained, and how the two contracting parties fulfilled their relative parts. The leaders amongst the prisoners have given their statements, and few will be inclined to doubt their sincerity or truth. They were men of unimpeached personal honor, and, as the subsequent career of several of them fully proves, with virtues and genius capable of serving and conferring distinction on any country but that which an infamous Government would not permit them to live in. None but those furious bigots who can see in Emmet, Macnevin and Sampson only "unhanged traitors," will doubt the veracity of their account of this very important negotiation.

It is obvious that the idea of ensuring their personal safety did not enter into their views. Against many of them, no evidence of any kind was in the possession of Government. Neilson, who was one of the movers in this business, was assured by Mr. Curran, and his other friends, that there was no evidence to be adduced against him, which could in any way affect his life.† "Those who know him best will readily give him credit, when he says, that the failure of the insurrection, and the daily execution of his virtuous friends in town and country, martyrs to the same cause, had, so far from creating a terror of death, actually made life a burthen to him. He further declares, that so far as he knows, there was not a prisoner who took part in this measure, but was actuated chiefly, if not solely, by considerations of a nature far from selfish or personal; by far the greater part of them were, and had long been, imprisoned merely

* Macnevin's Pieces of Irish History, p. 157.

† Madden's United Irishmen, 1 vol. 2 series, p. 153.

on suspicion ; nor was there any idea whatever of bringing them to trial, at that or any other time.”* Their object was to stop the effusion of blood, and when the idea of a treaty was first started, it was received more gladly from the hope of saving the life of Byrne. That was sacrificed by the treacherous cruelty of Government. But yet the prisoners imagined, that much good might still be effected, and that mercy might, though late, visit their afflicted country, as the price of their disclosures and self exile. They saw that the insurrection was quenched in the blood of the people, and that whilst four or five counties were making head against the whole of the King’s forces, no effectual attempt was made to assist them through the rest of the country ; that the valour and courage of the people, were rendered fruitless, from the want of military knowledge and capacity in their leaders ; that the arrest of the deputies, and the ablest agents of the Union had completely destroyed its power for effecting any thing of consequence ; that from the several defeats endured at New Ross, Vinegar Hill, and in the North of Ireland, further resistance was useless and ruinous ; that from the gross and profligate corruption of juries, and the unconstitutional conduct of judges, justice was perverted into a monstrous engine of murder ; that Government was already aware of all their internal and external transactions ; and finally, their ears were daily assailed with the accounts of military and civil executions, and their eyes pained, by seeing their friends led out to die upon gibbets. To stop this waste of life, to arrest the furious vengeance of Government, they agreed to disclose the history of their previous efforts, and to abandon their country, their families, and their friends.†

To impute to them treachery to the cause they had served so long, and to the men whom they had led into treason and rebellion, was a most gross and unfounded imputation, one worthy of the Government of that day, but not to be revived nor listened to, at this time. The character of men, who, whatever was their rashness, and whatever was their guilt, are still revered by their fellow-countrymen, is so valuable that it compels me to dwell upon the vindication of their motives longer than may be

* Madden’s *United Irishmen*, 1 vol. 2 series, p. 153.

† Macnevin’s account of the Compact in Madden’s book, 2 vol. 2 series, p. 112.

thought necessary. Emmet sums them up thus—"We entered into this agreement the more readily, because it appeared to us that, by it, the public cause lost nothing. We knew, from the different examinations of the state prisoners, before the Privy Council, and from conversations with Ministers, that Government was already in possession of all the important knowledge, which they could obtain from us. Whence they derived their information, was not entirely known to us; but it is now manifest that Reynolds, Magin, and Hughes, not to speak of the minor informers, had put them in possession of every material fact respecting the internal state of the Union; and it was from particular circumstances, well known to one of us, and entirely believed by the rest, that its external relations had been betrayed to the English Cabinet, through the agency of a foreigner, with whom we had negotiated. This was even so little disguised, that, on the preceding 12th of March, the contents of a memoir which had been prepared by one of the undersigned,* at Ham-burgh, and transmitted thence to Paris, were minutely detailed to him by Mr. Cooke. Nevertheless, those with whom we negotiated, seemed extremely anxious for our communications. Their reasons for this anxiety may have been many, but two particularly suggested themselves to our minds—they obviously wished to give proof to the enemies of an Irish Republic, and of Irish Independence, of the facts with which they were themselves well acquainted, while, at the same time, they concealed from the world their real sources of intelligence. Nor do we believe we are uncharitable in attributing to them the hope and wish of rendering unpopular and suspected, men in whom the United Irishmen had been accustomed to place almost unbounded confidence.

The injurious consequences of Government succeeding in both these objects, were merely personal; and, as they were no more, though they were revolting and hateful to the last degree, we did not hesitate to devote ourselves, that we might make terms for our country."† Another motive, too, impelled them to their decision. They felt anxious to vindicate the cause of the United Irishmen, and they conceived that this could be done, by a fair and candid development, of the objects of the Union.

* Dr. Macnevin.

† Madden, 2 vol. 2 series, 103.

These objects centred in the liberation of Ireland. But in that evil and angry time, the United Irishmen had been accused of every thing that was vile and infamous ; they had been denounced in Parliament as a "blasted society"—infidels in religion—a nest of selfish traitors. They wished to prove the falsehood of these charges ; and they conceived that they could prove this, even in the council-chambers and committee-rooms of their enemies, by a fair and manly avowal of their opinions and their designs. And it is submitted, that their vindication was perfect. The evidence they gave is a most valuable record—full of startling truths—and full of bold theories, that may not be impossible. They taught the Government how this country might be ruled, with advantage to itself, and honor to its rulers ; and, furthermore, they taught their countrymen how to achieve, and how to use a rational freedom. The Government cannot be said to have gained much by the treaty. Misrepresentation, false and garbled extracts of the evidence of the prisoners, achieved a miserable and temporary triumph ; but truth soon emerged from the mist that was thrown around it ; and the historian and the politician can consult, with advantage, the singular details given by these able and distinguished men, in the searching examinations to which they were subjected.

Such being the objects of the State prisoners, and of the Government, in entering upon this treaty, let us see how it was fulfilled on the part of the former. In the first place, they prepared an ample memoir of the foundation and progress of the Union—of its original and subsequent organization—and of its internal and external policy. This was not acceptable to Government, though Mr. Cooke acknowledged it was a fulfilment of the strict letter of the agreement. However, he suggested that it might be altered, according to the Lord Lieutenant's wish, so that it should not be a vindication of the United Irishmen. The Lord Lieutenant was not pleased, because it was a defence of the Union. How could it be otherwise than a defence ? It reviewed the history of the United Irishmen from the beginning, when their objects were strictly constitutional, and the conduct of their proceedings according to the law, down to that period when the aggressions of power upon popular liberty compelled them to abandon the safe course of open discussion, for the devious and dangerous paths of conspiracy and intrigue. It detailed, the

several aggressive acts of Government—the proscription of the friends of reform—the final extinction of the Volunteers*—the penal laws against meeting by delegates—the Insurrection and Indemnity acts, and the other stringent measures which were passed with the avowed or latent object of crushing the United Irishmen. The memoir dwelt particularly upon the provisions of the Insurrection Act, which punished the administering the United Irishmen's oath with death, and gave magistrates the power of proclaiming counties, and restoring peace to unquiet districts by breaking into the cabins between sunrise and sunset, seizing the inmates, sending them on board tenders, and transporting them, or wounding the national honour where it is most keenly susceptible, by outraging the delicacy of women. In fine, it made a case—so strong and convincing, and indicating the existence of a state of things, which would have made submission a greater crime than resistance. This might do very well as a piece of history, but it was not the kind of document adapted to the uses of the castle. The authorities there would gladly have proved the naked fact, that there had existed for a long time a deep-seated hostility to England amongst the United Irishmen. The memoir did this; but it did something more. It vindicated that hostility, in demonstrating the existence of a powerful cause for such a sentiment; it proved the ancient truth, that tyranny, cruelty, and oppression will beget the monstrous progeny of evil passions, hatred, and furious resistance. And this demonstration was not required by Lord Castlereagh or Lord Clare. A change, a slight alteration, the muffling of a few truths, the insinuation of a few falsehoods, would have rendered the memoir a document of vast utility. But the state prisoners were men of rough honesty. They promised the truth, and they told it. They would make no change, nor introduce the slightest alloy into the pure and unvarnished facts. And, therefore, the Government hit upon an expedient, by which they could make their own case, by which the power of garbling, colouring, and suppressing should be in their own power. The ablest men amongst the prisoners, Emmet, Macnevin, O'Connor, and Neilson, were summoned before

* For the brilliant career of this body, the reader may consult the books written about that period, which are filled with the most exaggerated praises and eastern flattery. To me they appear to have been a collection of men who, with great power, effected little, and could not keep what they had gotten. They might have had liberty—they took a few privileges; and were soon dispersed, leaving nothing but a name behind them.

the committees of the Lords and Commons, and were examined by the members composing them, on the subject of the Union, its views, and its organizations. The questions were ingeniously put, and were fully answered. If the Government desired the truth, it was told to them—if they sought to learn the means of future good government, these were supplied by men, who knew Ireland intimately. But that such was not their object, was speedily proved. The publication of the Report of the Commons' committee followed quickly in the order of time; and it was a document quite unparalleled in the proverbial falsehood of state papers for the utter disingenuousness of its texture. Misrepresentation, false induction, perversion of history, combined to make it a diplomatic wonder—wondrous from the utter recklessness of its composition. The newspapers in the service of Government were filled with garbled extracts from the testimony of the state prisoners, untrue statements of their evidence, and, in many instances, containing the direct reverse of its import. So far was this carried, that—though it was a part of the compact that names were not to be disclosed—the Government papers represented the prisoners as having given those of their associates in treason. This falsehood was not endured in silence, for three of the gentlemen managed to obtain means of contradicting it by an advertisement, which they published in two of the Dublin newspapers, to the following effect :*

“ Having read, in the different newspapers, publications pretending to be abstracts of the report of the Secret Committee of the House of Commons, and of our depositions before the committees of the Lords and Commons, we feel ourselves called upon to assure the public they are gross, and to us astonishing misrepresentations, not only unsupported by but, in many instances, directly contradictory to the facts we really stated on those occasions. We further assure our friends that in no instance did the name of any individual escape from us; on the contrary, we always refused answering such questions as might tend to implicate any person whatever, conformably to the agreement entered into by the state prisoners with Government.

“ ARTHUR O'CONNOR.

“ THOMAS ADDIS EMMET. .

“ WILLIAM JAMES MACNEVIN.”

* Macnevin's Pieces of Irish History, 161.

This temperate refutation excited a perfect tempest of furious invective in the Irish House of Commons. Mr. M'Naughten, and "two virulent barristers, Francis Hutcheson and Cunnyngham Plunket,"* humanely suggested summary execution as the fittest measure to be adopted towards the rash assertions of their own honour—a proposition not much more execrable than the one made on the previous 24th March, by Lord Farnham, who submitted "to the wisdom of the House whether it would not be right and necessary, that military executions should have retrospect to the persons who were then confined, and that they *should be disposed of as expeditiously as possible*."† The humanity of Lord Castle-reagh interposed itself between this brutal suggestion, and the prisoners; and on the former occasion, military execution was not done. The prisoners were merely remanded to close confinement, and the visits of their friends and relatives strictly forbidden. During this confinement, the Government proceeded, in its career of blood and calumny. In September, an act passed the houses of parliament, professedly to carry into effect the conditions of the treaty. That such was not its object must be clear from the fact, that so far from permitting the state prisoners to emigrate, according to these conditions, twenty of the parties who signed the compact, were sent to Scotland, and kept for upwards of four years, in close confinement. That the real object of this misnamed act of amnesty, was to put upon the shameless records of the legislature a statutory falsehood—a gross calumny upon the leaders of the United Irishmen, is apparent from its preamble. The act referred to is the 38th Geo. III. c. 78, which recites—"Whereas, during the wicked and unnatural rebellion which hath broken out in this kingdom, several persons who had taken up arms against His Majesty, or had traitorously and wickedly corresponded with and adhered to his enemies, or had been otherwise engaged in fomenting the said rebellion, and acting therein, have been apprehended and

* Pieces of Irish History, 162.—Irish Patriotism in those days was a strange thing. The eloquent opponent of a Union is found, but a year, before the "virulent" advocate for doing military execution on men at least *as honest as himself*!

† Debates in the House of Commons. Commons' Journal, March, 1798. This proposal is justified in the Dublin University Magazine, for December, 1843, p. 690; and the classic writer humanely suggests, that the Government, in acceding to his proposition, would have but followed the example of Cicero, and would have done well in reviving the tragedy of the Tullianum!

committed to prison for such their treasons, *several of whom being conscious of their flagrant and enormous guilt, have expressed their contrition for the same, and have most humbly implored his Majesty's mercy, and that he would be graciously pleased to order all further prosecution against them to stop and surcease, and to grant his royal pardon to them, on condition of their being transported, &c., to any foreign country, &c.*"

Let the reader who feels any interest in the characters of men, who suffered, for what they at all events conceived to be, the happiness of this country, turn to the memoir which they prepared in fulfilment of their arrangement with Government, and which it is to be remembered was rejected by the agent of Government, because it was a vindication of the United Irishmen, and he will certainly find no proof of these statements—no whimpering contrition—no mean demand of pardon.* Again, let the examinations of the prisoners—even in the appendix of wilful falsehood which follows the Report of the Committee of Secrecy—be read, and the same bold honesty, the same probably rash adherence to dangerous convictions, will be found to give a direct contradiction to this preamble. The Government, bad as it was, did not ask for any mean submissions; they were content with falsely representing that they had been made. Dr. Macnevin, in reply to a question of the Archbishop of Cashel, suggested by pious horror at the independent notions of an acknowledged traitor, said, "I have not, I own, any idea of sacrificing the interests of Ireland to those of any other country; nor why we should not in that, as in every other respect, be as free as the English themselves."† This is not the language of recantation. The Speaker asked the same person whether the people would consider themselves bound hereafter by the oaths of the Union? He was answered thus—"I, who am going to be an emigrant from my country, am dispensed from answering that question; yet I acknowledge, that were I to stay, I would think myself bound by them."‡ Does this speak consciousness of guilt, contrition, or abject supplication? That the prisoners themselves were utterly unaware of the pusillanimity imputed, by the preamble of the 38th Geo. III., to them, may be inferred from the steps they took to refute the calumny, and by the threats

* Pieces of Irish History, 142.

† Ibid, 196.

‡ Ibid, 211

which were made, if they persisted in publishing their denial. Having, by chance, seen a copy of the act in a London newspaper, one of the calumniated parties, Samuel Neilson, prepared a letter of refutation addressed to the editor, stating that there had been no retraction—no expression of sorrow for “unnatural rebellion”—no demand for pardon. But that the state prisoners had entered into a treaty with Government, by which they expected to stop the effusion of blood, and to terminate the afflictions of the country. A copy of this letter was sent to Lord Castlereagh; and, as the state prisoners had stipulated for freedom of publication, they did not anticipate any interference on the part of the Executive. This was ridiculous confidence, though, probably taking into consideration the subsequent conduct of that unrighteous body, it was wise not to have stimulated their appetite for oppression. Shortly after Lord Castlereagh had received the communication from Neilson, the latter was visited by two of the Government agents, Mr. Marsden and the indefatigable Cooke, who conveyed to him a message direct from the Lord Lieutenant. He was told, that if he published that letter, it was the firm determination of the Lord Lieutenant *to abandon the conditions of the compact and to cause civil and military executions to proceed as before!* These were the men who ruled our country at that time, men capable of recording falsehood in their abominable edicts, and of preventing its refutation by threatening the sword and the rope! These were the men against whose unholy rule, treason and rebellion were “unnatural!” This message was not from the remorseless Camden; it proceeded from the lips of Lord Cornwallis. It is, however, but just to him to remember, that he was surrounded by such advisers as Castlereagh; and that he was aided and assisted in the infamy of his conduct by the House of Commons, where propositions, equal in remorseless cruelty to his own, had been repeatedly and gravely made by men who assumed to be peculiarly the ‘friends of the people.’ In the long list of oppressions inflicted by the Anglo-Irish Government upon its victims, there is scarcely one of them, more full of refined cruelty than this. The character of men who were dear to the people was traduced in a solemn act of Parliament; they were represented as repentant sinners against their king; as having confessed their flagrant and enormous guilt; and as having implored pardon.

The truth was no where told that they had consented to abandon their country, and to submit to the searching inquisition of two parliamentary committees, for the purpose of saving the lives of their countrymen. Their motive was grossly misrepresented; and when indignant honour would have repudiated the calumny, it was silenced by the threat of resuming the career of decimation, by the aid of drumhead judges and military hangmen. That was, indeed, a time of horror, full of pregnant warning to future Governments, as well as to impatient patriotism; preaching forbearance and mercy to the one, and caution and much endurance to the other. The wise humanity of our days will not refuse the lesson.

A Government capable of using this artifice, was capable of any wrong. Twenty of the gentlemen who entered into the compact, and who fulfilled its conditions with exemplary correctness, after some interval of confinement in the prisons of Dublin—hateful to them as the scenes of the sufferings, and death of their friends—were transmitted to Fort St. George, in Scotland, where, for four years, they were, in breach of all honour and forgetfulness of all treaties, kept closely imprisoned. The humanity of the governor, Colonel Stuart, a Scotchman, contended with his duty and instructions in rendering their condition at all endurable. In this list of exiles—driven from Ireland by its factious Government—were Thomas Addis Emmett, William James Macnevin, and William Sampson.* After more than four years' imprisonment, those gentlemen, as well as the other prisoners, obtained their freedom, and their subsequent fate will be found detailed at large in Dr. Madden's very interesting memoirs of the United Irishmen, to which I have been so much indebted for the facts in the preceding pages.

It is hoped, that though of necessity, the events growing out of the existence of the society of the United Irishmen, have been but briefly dealt with in this Introduction, its perusal will enable the reader to appreciate more fully the interesting trials which

* Of these three men, the first became the leading member of the bar of New York; the second, one of the first medical men in that city; and the third, an advocate of great distinction in the honourable profession of which Thomas Addis Emmet was the greatest ornament. Is this any comment upon the Government, whose shrewdness found in them unsafe citizens of a state, administered by a Clare and a Castlereagh? A late writer, in speaking of the leaders of the rebellion of 1798, says that they were "almost without exception, shallow, and conceited sciolists." *University Magazine* (December, 1843), p. 685.

follow. They have been arranged with care ; the best reports in all cases have been obtained ; and they are printed in the order in which they occurred. Their succession, too, will serve to indicate the progress of the assaults made by Government upon public liberty—from the attack upon the press in the prosecution of Archibald Hamilton Rowan, down to the various trials for high treason with which they sought to consummate their triumph, over the principles and projects, of the United Irishmen.

The men with whom this Introduction and these trials are conversant, were, no doubt, *traitors* ; but it is probable that the details, both here and there given, may impart a meaning to that word, more restricted than that which it enjoys in the comprehensive language of a statute, or in the unlimited phraseology of a court sycophant, or an Irish loyalist. No man will unconditionally defend the rash projects in which they embarked ; but let us not be blinded—there is no motive for such meanness now—to the unbounded devotion and disinterested zeal with which they sought, after their own fashion, to serve their country. And let it be always remembered, that if they abandoned the straight and open course of the constitution, it was when an arbitrary, a dishonest, and sanguinary government had made its ancient ways unsafe and perilous to the lovers of civil and religious equality.

ARCHIBALD HAMILTON ROWAN.

ARCHIBALD HAMILTON ROWAN, the descendant of a distinguished Scotch family, which settled in Ireland, in the reign of James the First, was celebrated for the leading part he took in the struggles of Irish nationality. He was born in London, on the 12th May, 1751 (old style). He was connected with the noble family of Abercorn, and descended from Sir James Hamilton, who was afterwards created Viscount Claneboye, and whose son became Earl of Clanbrassil.*

His father, Gawin Hamilton, had gone to settle in London in 1750, where Archibald Hamilton was born. His name of Rowan was taken, together with the fortune, of his maternal grandfather, who had assumed the care of his education and advancement, and who was a man of sturdy independence, in his notions both of politics, and religion.

The events of Rowan's life, previous to his coming to reside permanently in Ireland, though amusing and strange enough, may be briefly noticed in this place. He received a good education, which was superintended by Mr. Rowan, his grandfather, until his death, in 1767. After this event, Archibald Hamilton Rowan was sent to Westminster school, where his proficiency was not very great, though he was observed, as a boy, anxious for distinction, as well as for being fond of gaiety; and ready for any frolic, however wild or dangerous. His father took a house in the neighbourhood of the school, and young Rowan met, in his circle, a society from whose teaching it is not improbable that he derived the peculiar political bias, which influenced his future career. Amongst the frequent visitors at his father's house, was Dr. Charles Lucas, the celebrated Irish patriot.

From Westminster, Rowan was removed to Cambridge. Whilst a member of this university, his life was gay and dissipated. He had a command of money, kept hunters, mixed in what is called the best

* Both these titles became extinct on the death of Henry, the third Lord Claneboye and second Earl of Clanbrassil; but the former was revived in 1800, when it was conferred on Sir James S. Blackwood (connected by marriage with the family), together with a sum of £15,000, as a reward for his vote in favour of the Legislative Union. The title of Clanbrassil has been also revived, and is that by virtue of which, Lord Roden (another branch of the family) sits in the House of Lords.

society, and took part in some of these extraordinary freaks in which the young aristocracy loved to indulge. He carried to Cambridge the same wildness which distinguished him at Westminster; and was *rusticated* for throwing some obnoxious personage into the Cam. The Duke of Manchester gave him a commission in the Grenadiers of the Huntingdon Militia, and, whilst a Captain in that regiment, he obtained considerable *éclat* by swimming in his full regimentals, with a fusée slung at his back, from Gosport to Plymouth. His college and military life abound in none, but trivial details, like these.

During his college career, he accepted the post of secretary to Sir Charles Montague, who was governor of South Carolina. With him he sailed to Charleston, where, however, he remained only three months. In his autobiography, he gives us no reason for his return, which he notices thus :—

“ Having spent nearly three months at Charleston, I got a passage from Captain Hayward to England, on board the *Swallow*; taking with me a racoon, an opossum and a young bear. After a very rough passage, I landed at Portsmouth—my racoon dead, my bear washed overboard, and my opossum lost in the cable tier—and I returned to Cambridge.”

The character of Rowan was given in the *World* newspaper by Topham Beauclere, who was a contemporary of his at Cambridge, and who published a series of characters of the different young men about London who had been educated at Westminster and Eton. The following extracts will serve to show the estimate, in which he was held by his fashionable intimates :—

“ With more than boyish aptitudes and abilities, he should not have been lost amongst boys. His incessant intrepidity, his restless curiosity, his undertaking spirit, all indicated early maturity—all should have led to pursuits, if not better, at least of more spirit and moment, than the mere mechanism of the dead languages. * * *

“ Besides, Hamilton was to be found in every daring oddity. Lords Burlington and Kent, in all their rage for pediments, were nothing to him in a rage for pediments. For often has the morning caught him scaling the high pediments of the school door, and, at the peril of his life, clambering down, opening the door within, before the boy who kept the gate came with the key.* His evenings set upon no less perils; in pranks with gunpowder, in leaping from unusual heights into the Thames! * * *

“ Had he been sent to Woolwich, he might have come out, if not a

* This is wretched stuff; but it shows the description of society and the pursuits of the future politician, who was foremost in teaching, and in suffering for, the bold and noble doctrines of “ Universal Emancipation.”—Ed.

rival of the Duke of Richmond, at least a first-rate engineer. In economic arts and improvements, nothing less than national, he might have been the Duke of Bridgewater of Ireland. Had the sea been his profession, Lord Mulgrave might have been less alone in the rare union of science and enterprize. * * *

"To Cambridge, therefore, he went ; where, having pursued his studies, as it is called, in a ratio inverse and descending, he might have gone on from bad to worse, and so, as many do, putting a grave face upon it, he might have had his degree. But his animal spirits and love of bustle could not go off thus undistinguished ; and so, after coolly attempting to throw a tutor into the Cam—after shaking all Cambridge from its propriety, by a night's frolic, in which he climbed the sign-posts and changed the principal signs, he was rusticated until the good humour of the University returning, he was readmitted and enabled to satisfy his grandfather's will.* Through the intercourse of private life, he is very amiable. The same suavity of speech, courteous attentions, and general good nature he had when a boy, are continued and improved. Good qualities the more to be prized as the less probable from his bold and eager temper, from the turbulence of his wishes and the hurry of his pursuits."

If all this affected description be true, and there is no reason to doubt it, as we find it copied, without any disclaimer in Rowan's Autobiography, it presents to us the image of a gay young man, leading fashion in fashion's silliest shapes, and fitter to be the founder of the modern school of aristocratic rioters, than to be the grave and energetic reformer of political grievances, and the martyr of strong and generous convictions ; but still with good qualities that promised a release, sooner or later, from the giddiness of his youthful pursuits. He continued, however, for some years, the career which his rank, fortune and disposition opened to him ; and having visited France during the period of the American war, he met with George Robert Fitzgerald, and enjoyed the unenviable honour of acting as his friend in a duel which he fought with Major Baggs, in which both principals behaved badly, and both were severely wounded. The French authorities made a great deal of noise about the matter, but in the end did nothing, and Mr. Rowan escaped the consequences of his folly. Shortly after this last feat, he was appointed by the Marquis de Pombal, then minister in Portugal, to a lieutenant-colonelcy in the Portuguese service, but the Marquis having been disgraced, Mr. Rowan never served, and spent the next few years in the gratification of a roving habit of mind—visited Tangiers, and became intimate with its

* Mr. Rowan had directed him to graduate in Cambridge.

governor—went to Paris and amused himself to the top of his bent ; in fact, went everywhere, saw everything, and did a great many eccentricities, which he details with amusing simplicity in his Autobiography. The period, however, was come, when, if he did not altogether throw aside the wild habit of his youth, the first step was taken, and the foundation was laid of a future course of useful exertion and honourable suffering. Speaking of this period, he says :—

“ When I mentioned my mother’s family at Pinnel, I alluded to a young Irish lady, then a visitor with her. I should explain how Miss Dawson had become almost an inmate in her family—my mother had the strongest friendship for her father, Walter Dawson, Esq., of Lisanisk, near Carrickmacross; this gentleman had determined to give a London education to Sarah Anne, his only daughter, who was possessed of great personal beauty and innate elegance of manner; and, at the age of thirteen, he brought her over from Ireland, and placed her at one of the most celebrated schools. During the vacation she resided with my mother, who thus became extremely attached to her; and when, at the age of sixteen, she left school, and had not yet returned to her parents; my sister’s absence made her affection and society more than ever necessary to my mother. At my mother’s earnest entreaty, Miss Dawson consented to accompany her to France. I saw in her so much good sense and propriety, in many different and embarrassing situations, that I determined on offering her my hand, and wrote to her father in Ireland for his permission, to which he consented, and in 1781, we were married by the Dutch Ambassador’s chaplain in Paris, and for the purpose of registry we set out immediately for London where we were married a second time, in St. James’s parish church, from my mother’s house in Great Marlborough-street.”

He returned to Paris, and resided with his mother in a house which she had taken from Lord Southwell, where his eldest son, Gawin Hamilton, was born. He remained for two years in France after his marriage, and after the expiration of that period came to reside in Ireland. He purchased Rathcoffey, in the county of Kildare, in 1784. Nor did his active mind remain long unemployed, though its activity found occupation altogether different from scaling pediments, fighting duels, or swimming tutors. Before he was long in Ireland he strenuously took up the case of Mary Neale, a young girl of fourteen years of age, who had been grossly abused in the house of a Mrs. Lewellyn, and whose abuser was one in high station. The woman was prosecuted and sentenced to death, and one Edgeworth, who had induced a girl to swear a robbery against Neale, his wife, and the injured child, was also tried and sentenced to a year’s

imprisonment and the pillory. These wretches were fit objects for the mercy of the Government, and received a pardon, to the amazement and indignation of the public, who felt the iniquity of the interference more keenly as it was supposed that the infamous Lord Carhampton, (who was suspected of being a principal in the transaction), had influenced Lord Westmorland to this abuse of mercy.* This was resisted by Mr. Rowan, and his opposition to this extension of pardon to such atrocious criminals, together with his active exertions in bringing them to justice, earned for him a considerable share of popular affection, and general esteem. Sir Jonah Barrington, in his *Personal Sketches*, gives a ludicrous account of the excess to which Mr. Rowan carried his enthusiasm on the part of Mary Neale; but Sir Jonah's statements are rather more valuable for their wit, than their truth. One passage is worth preserving, as a description of Mr. Rowan, done in the broad style of caricature for which Barrington is celebrated—"A man who might serve as a model for Hercules; his gigantic limbs conveying the idea of almost supernatural strength; his shoulders, arms, and broad chest were the very emblems of muscular energy; and his flat, rough countenance, overshadowed by enormous dark eyebrows, and deeply furrowed by strong lines of vigor and fortitude, completed one of the finest, yet most formidable figures I ever beheld."

Mr. Rowan entered the ranks of the Volunteers, as a private, in his father's Company, at Killyleagh, and attended the last review of that body which took place in the plain of the Falls near Belfast, on the 12th and 13th of July, 1784, and was appointed by the line to present an address, (which he had drawn up himself,) to Lord Charlemont, "from a body of armed citizens determined to continue that association." The Earl of Charlemont—always elegant, and always weak, a hero-bigot—declined to receive the address; but said that they would shortly meet in their civil capacity and pass an address to Parliament for a reform of abuses. Rowan made a characteristic reply, "that citizens with Brown Bess on their shoulders were more likely to be attended to."† In May, 1786, he was elected to command the Killyleagh Volunteers. In every political movement, and

* The following lines were written at the time:—

PETITION OF THE STATUE OF JUSTICE ON THE CASTLE GATE.

Since Justice is now but a pageant of state,
Remove me, I pray you, from this Castle gate,
Since the rape of an infant, and blackest of crimes,
Are objects of mercy in these blessed times
On the front of their prison, or hell let me dwell in,
For a pardon is granted to Madam Lewellyn.

† Autobiography of A. H. Rowan, 117.

every military display of the national army, he took an active part. It suited the character of his mind, and the tone of his politics. Brave and impetuous, an ardent lover of liberty; he delighted in the display of armed citizens, by whose courage and constancy he vainly hoped that she might be boldly attained, and nobly preserved. In 1790, he became a member of the Northern Whig Club, formed under the sanction of Lord Charlemont, and mainly by the exertions of Dr. Halliday, a man of great wit and general attainments; and at a later period he joined the Society of United Irishmen. He entered warmly into their views, made the acquaintance of the leading men of that party, and was soon himself one of the most popular persons in the Union. His connection with them led to the circumstances disclosed in the following memorable trial—memorable for being amongst the first attacks of Government upon the society, and memorable too for the splendid ability with which the doctrines of universal freedom were defended by John Philpot Curran—a name never to be mentioned in Ireland, but with pride and affection. The libel for which Mr. Rowan was prosecuted will be found set out in the *ex officio* information filed by the Attorney-General. It was a paper addressed by the United Irishmen to the Volunteers, and was circulated at a meeting of the Dublin Volunteers, held in Cope-street, at the house of a fencing master. It is unnecessary to give any detail of the circumstances, which appear in full in the testimony of the witnesses for the crown. Mr. Rowan was inclined to employ none but barristers who were members of the Union, to defend him; but Messrs. Emmet and Butler, conceiving themselves too junior for the conduct of so grave a case, declined, and at the special instance of Mrs. Rowan, Curran was retained on this understanding, (to which he alludes in his speech) that he should employ his talents more in defence of the paper than on any minor subject.* The trial came off on the 29th January, 1794, and Mr. Rowan was found guilty. A motion for a new trial having been unsuccessfully made, he was called up, and Mr. Justice Boyd pronounced the sentence of the Court of King's Bench, that Mr. Rowan should pay a fine of £500, and be imprisoned for two years, and that he should find security for good behaviour for seven years, himself in the sum of two thousand pounds, and two others in one thousand each. Mr. Rowan was committed to Newgate, and his situation was rendered as agreeable as it could well be made, under the circumstances. His conviction having been calculated upon, it is told by the editor of his Autobiography, that some respectable adherents of Government antici-

* Autobiography of A. H. Rowan, 184.

pated, and sought to realize the anticipation by their influence, that he would be exposed to the degrading punishment of the pillory; on hearing which, Kirwan, the philosopher and chemist, who had the *entré* of the Castle, went to the secretary and asked if it were *possible* that such a punishment could have been contemplated? "What! shew such a vindictive spirit as to make the pillory a punishment for a political offence! Shame! The pillory is a punishment for disgraceful crimes. Rebellion may be a crime, but not a disgrace; nay more, if successful it becomes a virtue. Should you put Rowan into the pillory, you would revolt the entire order of gentlemen in Europe. I know it is improper to hold out a threat to Government; but let me assure you the people of Dublin will not allow this; and weak as I am, I will draw my sword and head a mob, and break your pillory to atoms; and let the blood which may be shed be charged to the vindictive spirit of those who proposed so infamous a proceeding." The secretary assured him that though *certain persons* had hinted at such a punishment, it was not intended. It may not be difficult to divine that the same parties who prompted the extension of mercy to a pander and reprobate, would instigate the disgraceful punishment of a gentleman like Mr. Rowan.

Whilst Mr. Rowan was in Newgate, Mr. Jackson arrived from France on his mission of rebellion, and unfortunately for Mr. Rowan obtained an introduction to his prison. It was a strange place to contemplate a revolution, but Mr. Rowan was sanguine, and probably was excited by his own condition, as well as by his political bias, to lend his attention to the temptations held out by Mr. Jackson. He involved himself with that unfortunate person so much, that he was obliged to consult his safety by flight, which he effected by bribing his under jailer, to permit him to leave the prison, and to visit his house for the alleged transaction of some legal business; whilst there he got down by a back window, and took refuge with Mr. Sweetman, a friend of his, who resided at Baldoyle, in the neighbourhood of Dublin, whence he escaped in a small open boat to France, passing through the English fleet in a dense fog. Mrs. Rowan, in a letter subsequently written to her husband, somewhat unreasonably charges Wolfe Tone, with having seduced Mr. Rowan into the treasonable correspondence with Jackson. There is no evidence of this fact in Rowan's own account of the transaction; the contrary would rather appear to have been the true state of the case, and if there was any seduction at all it might as well have proceeded from Mr. Rowan. "It was also proposed that some well-informed and trusty person should immediately proceed to France, to arrange the plan of pro-

ceeding. Our eyes were immediately turned to Mr. Tone, &c.*" Mr. Rowan's adventures in France were varied, and occasionally dangerous—at one time the companion of galley slaves, and suspected of being an English spy—at another, living at the expense of the nation—he saw some of the strangest scenes of the revolution, being a resident in that country at the time of the execution of Robespierre and the Terrorists. He did not remain many months in France, and after considerable difficulties, arrived in Philadelphia, amongst the first of the United Irishmen who sought and received the hospitality and protection of America.

He remained for five years in America, separated from his wife and children, discontented and speculating. He was a farmer, and a calico manufacturer, and succeeded in neither pursuit. Essentially aristocratic, he disliked the manners of the people, though he made some valuable friends amongst them, and we accordingly find his letters filled with constant expressions of discontent, if not despair. By considerable influence he was permitted to return to Europe, and had the happiness of a reunion with his faithful and noble-minded wife, with whom, and with his family, he settled at Altona, where he remained from 1800 to 1803.

Mr. Rowan was, after some time, admitted to the full enjoyment of the King's pardon, and returned to settle finally in Ireland, in 1806, and on the death of his father took up his residence in Killyleagh Castle, his patrimonial estate, in the county of Down. From this period, his career was one of easy domestic enjoyment. He spent his large fortune in doing good to a grateful tenantry—reducing to practice the doctrines he had taught and suffered for, and living to see the triumph of the political opinions for which he had been driven from his country, and for which his friends had sacrificed their lives. He made no compromise with power, nor proved his gratitude by apostasy. Consistently the friend of his Catholic countrymen, he became a member of the Association, where his name was received with the most grateful enthusiasm. Attacked in Parliament by Mr. Peel and Mr. Dawson as an "attainted traitor," he had the spirit, in his 74th year, to seek for reparation at the hands of the latter gentleman, and the good fortune to obtain a disclaimer of intentional offence.*

He died on the 1st November, 1834, in his 84th year, his attached wife having preceded him to the grave only a few months before. "He had," says the Editor of his Autobiography, "a full and commanding person, in which agility, strength, and grace were combined. His features were expressive and strongly marked—in his younger

* Autobiography of A. H. Rowan. 211.

days he was universally regarded as handsome, and so attractive of admiration that the eyes of all were turned upon him whenever he came into public; a circumstance which must have greatly tended to foster his love of popularity and stimulate him to the achievement of those feats for which he became so distinguished in his younger days. In Rowan's character were blended many of the best virtues, with a due share of human imperfections. The great tendency of his mental constitution was a love of popularity—*nimum gaudens popularibus auris*—and this fostered that taste for politics which had been early implanted in his mind, and which “grew with his growth, and strengthened with his strength.” In private life, he was social and domestic, an early riser, temperate in his habits, and when not provoked to anger, bland, courteous, amiable, and capable of winning and retaining the most devoted friendship, as he experienced in no ordinary degree in many trying circumstances. As a husband he was constant, fond, and studious of meriting the esteem of his wife, by whose judgment he often suffered himself to be directed, and of whose matronly virtues he always expressed the highest appreciation. No father could be more affectionate, none more anxious for the best interests of his children.”†

Such was the first victim of distinction selected by the Anglo-Irish Government, as a sacrifice to the policy with which this country was ruled—as a sacrifice to perpetuate a system which has since been destroyed by the hands of British statesmen themselves—but one whose evil results are yet felt in the distracted state of Ireland, and in the disunion, poverty, and crimes of her children.

* Autobiography, 414.

† Autobiography, 455.

KING'S BENCH.

THE FOLLOWING INFORMATION

WAS FILED

BY HIS MAJESTY'S ATTORNEY GENERAL,

EX OFFICIO,

AGAINST

ARCHIBALD HAMILTON ROWAN, ESQ.

OF TRINITY TERM in the thirty third year of the reign of our sovereign LORD GEORGE THE THIRD, now King of Great Britain, and soforth, and in the year of our Lord one thousand seven hundred and ninety-three.

*County of the City of } BE it remembered that the Right Honour-
Dublin, to wit. }* able Arthur Wolfe, Attorney General of our present Sovereign Lord the King, who for our said Lord the King prosecutes in his behalf, in his proper person comes into the Court of our said Lord the King, before the King himself, at the city of Dublin, in the county of the said city, on the eighth day of June in this same term, and for our said Lord the King gives the court here to understand and be informed, that Archibald Hamilton Rowan, of the city of Dublin, Esq., being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland, discontents, jealousies, and suspicions of our said Lord the King and his government, and disaffection and disloyalty to the person and government of our said Lord the King, and to raise very dangerous seditions and tumults within this kingdom of Ireland ; and to draw the government of this kingdom into great scandal, infamy, and disgrace, and to incite the subjects of our Lord the King to attempt, by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, and to incite his Majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom, by an armed force, on the sixteenth day of December, in the thirty-third year of the reign of our said present Sovereign Lord George the Third, by the grace of God of Great Britain, France, and Ireland,

King, defender of the faith, and so forth, with force and arms, at Dublin, aforesaid, to wit, in the parish and ward of St. Michael the Archangel, and in the county of the said city, wickedly, maliciously, and seditiously, did publish, and cause and procure to be published, a certain false, wicked, malicious, scandalous, and seditious libel, of and concerning the government, state, and constitution of this kingdom, according to the tenor and effect following, that is to say,—“The Society of United Irishmen at Dublin, to the Volunteers of Ireland. William Drennan, chairman, Archibald Hamilton Rowan, secretary. Citizen soldiers, you first took up arms to protect your country from foreign enemies and from domestic disturbance; for the same purposes it now becomes necessary that you should resume them; and a proclamation has been issued in England for embodying the militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, [meaning a proclamation which issued under the great seal of the kingdom of Ireland, the eighth day of December, one thousand seven hundred and ninety-two,] for repressing all seditious associations; in consequence of both these proclamations it is reasonable to apprehend danger from abroad and danger at home, for whence but from apprehended danger are these menacing preparations for war drawn through the streets of this capital [meaning the city of Dublin] or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that Volunteer honour which was hitherto inviolate, are those terrible suggestions and rumours and whispers that meet us at every corner, and agitate at least our old men, our women, and children; whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you Volunteers of Ireland are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution. We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud, even amidst the storm raised by the witchcraft of a proclamation, that to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance, to your renovation must be owing its future freedom and its present tranquillity; you are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external hostility, and to maintain that internal regimen throughout the land, which, superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war. Citizen soldiers, to arms, take up the shield of freedom and the pledges of peace—peace, the motive and end of your virtuous institution—war, an occasional duty, ought never to be made an occupation; every man should become a soldier in the defence of his rights; no man ought to continue a soldier for offending the rights of others; the sacrifice of life in the service of our country is a duty much too honourable to be intrusted to mercenaries, and at this time, when your country has, by public authority, been declared in danger, we conjure you by your interest, your duty, and your glory, to stand to your arms, and in spite of a police, in spite of a fencible militia, in virtue of two proclamations, to maintain good order in your vicinage, and tranquillity in Ireland.

It is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and their lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind in the speedy resurrection of a free constitution, [meaning that the people of Ireland had not at the time of the publishing aforesaid a free constitution] of liberty and of equality, words which we use for an opportunity of repelling calumny, and of saying, that by liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination; this is a calumny invented by that faction, or that gang, which misrepresents the King to the people, and the people to the King, traduces one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland; liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will, and that legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness. If our constitution be imperfect, nothing but a reform in representation will rectify its abuses; if it be perfect, nothing but the same reform will perpetuate its blessings. We now address you as citizens, for to be citizens you became soldiers, nor can we help wishing that all soldiers partaking the passions and interest of the people would remember, that they were once citizens, that seduction made them soldiers, but nature made them men. We address you without any authority save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce; here we sit without mace or beadle, neither a mystery nor a craft, nor a corporation; in four words lies all our power—universal emancipation and representative legislature—yet we are confident that on the pivot of this principle, a convention, still less a society, still less a single man, will be able first to move and then to raise the world; we therefore wish for Catholic emancipation without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is, wide enough to admit three millions, it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer; the Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect, but to society—to no cause, but Christianity—to no party, but the whole people. In the sincerity of our souls do we desire Catholic emancipation: but were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own. For both these purposes it appears necessary that provincial conventions should assemble pre-

paratory to the convention of the Protestant people; the delegates of the Catholic body are not justified in communicating with individuals or even bodies of inferior authority, and therefore an assembly of a similar nature and organisation is necessary to establish an intercourse of sentiments, an uniformity of conduct, an united cause and an united nation; if a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest, the people will relapse into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risk the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation. Unless the sense of the Protestant people be on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the parts unite into one mass; we may perhaps serve some person or some party for a little, but the public not at all; the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves. The fifteenth of February approaches, a day ever memorable in the annals of this country as the birth-day of new Ireland; let parochial meetings be held as soon as possible, let each parish return delegates, let the sense of Ulster be again declared from Dungannon, on a day auspicious to union, peace and freedom, and the spirit of the North will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations, and we have addressed you, citizen soldiers, on this subject from the belief, that your body uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations, and friends. We offer only a general outline to the public, and meaning to address Ireland, presume not at present to fill up the plan, or pre-occupy the mode of its execution. We have thought it our duty to speak. Answer us by actions; you have taken time for consideration; fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented? How many nations, in this interval, have gotten the start of Ireland? How many of your countrymen have sunk into the grave?" In contempt of our said Lord the King, in open violation of the laws of this kingdom, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. WHEREUPON the said Attorney General of our said Lord the King, who for our said Lord the King in this behalf prosecutes, prays the consideration of the court here in the premises, and due process of law may be awarded against him the said Archibald Hamilton Rowan in this behalf, to make him answer to our said Lord the King touching and concerning the premises aforesaid.

ARTHUR WOLFE.

THOMAS KEMMIS, Attorney.

Received the 8th of June 1793.

(Copy.)

To this information Mr. Rowan appeared, by Matthew Dowling, gent. his attorney, and pleaded the general issue—Not Guilty—and the court having appointed Wednesday the 29th day of January, 1794, for the trial of the said issue, the undernamed persons were sworn upon the jury:

Sir F. HUTCHINSON, Bart.
FREDERICK TRENCH, Esq.
WILLIAM DUKE MOORE,
HUMPHRY MINCHIN,
RICHARD MANDERS,
GEORGE PALMER,

JOHN READ,
ROBERT LEA,
RICHARD FOX,
CHRISTOPHER HARRISON,
GEORGE PERRIN,
THOMAS SHERRARD.

Upon calling over the jury, John Read was objected to, as holding a place under the crown,* but the Attorney General insisting upon the illegality of the objection, and observing that it went against all that was honourable and respectable in the land, it was overruled by the court. Richard Fox, when called to the book, was interrogated whether he had ever given an opinion upon the subject then to be tried, to which he answered, that he did not know what the subject of the trial was. The same question was put to Thomas Sherrard, who returned a similar answer.

Joshua Dixon, who had been sworn upon the jury, without any objection, here stated, that he had given an opinion upon the subject, upon which Mr. Attorney General consented that he should be withdrawn, but protested against the right of the defendant's counsel to examine the jurors as they had done. If they had any objection, they ought to make their challenge, and support it by evidence.

The counsel for the defendant answered, that they would not acquiesce in the consent of the Attorney General to withdraw the juror, if their examination was to be objected to, and intimated that the juror ought to be withdrawn upon the desire of the Attorney General, without any consent whatever being entered into.

Hereupon the Attorney General desired that the juror might be withdrawn.

Counsel for the Prosecution.

Mr. ATTORNEY GENERAL,
PRIME SERJEANT,
SOLICITOR GENERAL,
Mr. FRANKLAND,
Mr. RUXTON,

Agent—Mr. KEMMIS.

Counsel for the Defendant.

Mr. CURRAN,
Mr. RECORDER,
Mr. FLETCHER.

Agent—Mr. DOWLING.

Mr. Ruxton opened the pleadings.

Mr. ATTORNEY GENERAL—My Lord and Gentlemen of the Jury, In this case, between the KING and ARCHIBALD HAMILTON ROWAN, Esq., it is my duty to prosecute on behalf of the crown. The traverser in this case, gentlemen, stands accused upon an information filed *ex officio*, by the King's Attorney General, for publishing a seditious libel. It is my duty to lay the facts of this case before you—it will be the duty of another of his majesty's servants to observe upon the evidence. I shall state the nature of the charge and the questions

* Co. Litt. 156 a; 2 Hale. His. Pl. c. 271; Hawkins Pleas of the Crown, ch. 43, sections 32, 33.

you are to try ; I will then state such circumstances as are necessary to be taken into your consideration, for the purpose of understanding and expounding that paper which the information charges to be a malicious, and seditious libel. The information charges, that Archibald Hamilton Rowan, maliciously designing and intending to excite and diffuse amongst the subjects of this realm, discontents, disaffection and disloyalty to the king and government, and to raise very dangerous seditious and tumults, and to draw the government into scandal, infamy and disgrace, and to incite the subjects to attempt, by force and with arms, to make alterations in the government, and to excite the subjects to anarchy, to overturn the constitution and overawe the legislature of the kingdom, did publish the libel set forth in the information. In this case, therefore, it will be for you, gentlemen, upon the evidence which shall be laid before you, to determine, whether the traverser has been the publisher of that paper or not. I shall, in the course of what I am to offer to the court and to you, read the very libel itself, and make such observations as occur to me to be proper in the present state of the business. Previous, however, to my doing so, I will take the liberty, gentlemen, of stating to you some facts and circumstances that appear to me deserving of attention in the investigation of the matter before you ; and in doing so, I shall carefully avoid mentioning many facts and circumstances which those disgraceful times have furnished, that might lead your verdict one way or the other. I shall not attempt to excite your passions. I am happy at length that this case has come before an impartial jury. It has long been the desire of every good man that this matter should come to trial before that constitutional tribunal who stand arbiters in this case, to protect the accused against the power of the crown ; not resembling any of those prosecutions which the turbulence of former times have excited, you are assembled with that coolness which the solemnity of the occasion requires, to determine whether Mr. Rowan be guilty, criminally, of the offence charged against him. Take the libel into your consideration, and determine, as the law now allows you to do, whether it be a libellous publication, tending to excite sedition, to overawe the government ; or tending to produce any of the effects imputed to it. I shall now proceed to state a few facts which I said it was my duty to do. I shall call your attention to the history of the times about which this libel was published :—No man, let his situation be what it may, can be too cautious in uttering what ought not to be said, which might influence your judgment upon your oaths ; and in that office which I hold, which is the office of the people, as well as of the crown, it is more than a common duty to take care, not to step beyond that line which leads to common justice. I am warranted by the authority of a court of justice, by the proceedings of the King's Bench in England ; by the opinion of a Judge of as much spirit and independence as any man, I allude to the case of the printer of the *Morning Chronicle*, in which Lord Kenyon informs the jury, that it is necessary, in cases of this kind, to attend to the circumstances and history of the times in which the libel was published.* They tend to explain the motives

* Howell. St. Trials, vol. 22, p. 1017.

which induced the publication, and the meaning of the libel itself. He says it is impossible for the court, or a jury, to shut their ears against the history of the times. Besides that common principle, I am the more justifiable in what I shall state, because the libel charged comes from that body of men, who have constituted themselves by the name of "The Society of United Irishmen in Dublin." From the time of the restoration of our constitution—from the year 1784 to the year 1792—this country advanced in prosperity, with a regular progress and gradation. The agriculture, commerce and police improved; the civilization of the country proceeded uniformly from year to year; the commonalty began to enjoy blessings they had been strangers to—ships crowded in our harbours—commerce occupied our ports—culture in our fields, and peace and happiness every where prevailed. The French revolution took place, when there were found many men, who from situation, from circumstances, from ambition, were desirous of commotion. Clubs were formed in the metropolis with the avowed intention of improving the constitution, for they must assume some pretext, but with a view, I fear, under colour of that, to overturn it. They subsisted here in this town under different names, till at length in 1791, they formed themselves into a club, called the Society of United Irishmen, consisting at first of a small number, composed of various classes of men, certainly some of them of the learned professions;—some of the lowest members in the community. In 1791 they continued to pour upon the public daily publications, setting forth the distresses of the people, teaching them to be discontented with their situation and the government of the country. Things thus proceeded, down to the latter end of the year 1792. In the latter end of autumn, 1792, the allied armies retired from the kingdom of France: the convention of that kingdom began to hold a high language, and to talk of oversetting the government of kings. An attack was made upon regal authority, a spirit was stirred among those desirous of such schemes—it seemed to inspire them. There was a talk of overturning the government of king, lords, and commons—success at the same time seemed to crown the arms of the French; they advanced beyond their own territory, and menaced an attack upon the United States of Holland. In this situation of things, there did pervade a gloomy apprehension for the safety of the country. Emissaries from France were spread throughout Europe; a new array of a new corps was made in Dublin in the noon day, decorated with emblems of sedition; they were to parade in your streets, and to be marshalled in your squares. The Volunteers of Ireland, a name revered by this country and by every good man loving the constitution, that sacred name was made a cloak for arming a banditti, that arraigned the constitution and degraded the name of Volunteer; a National Guard was formed upon the plan of those in Paris. It is notorious to every man in Ireland, to every man in the British dominions, that such men assembled with clothing of a peculiar uniform, with emblems of harps divested of the royal crown; every thing was undertaken to spread the spirit which animated themselves, and can any man forget the situation of Dublin, in September, October, and November, 1792, which caused apprehensions in those who were well affected to the government and

tranquillity of the country? Can any man forget the state of the nation at this period? her credit was shaken, good people stood appalled; those loving peace stood astonished at the languidness of government. At length that government came forward which had never slept, but had been proceeding with mildness, determined not to go forth to action, nor have recourse to any severer remedies until every man in the state, who had a moment's reflection, must see the necessity of the exertion. The troops are summoned to meet, the guards are summoned to assemble, and the first battalion of National Guards were to have paraded, clothed like Frenchmen. The night before the Lord Lieutenant had summoned the council of the kingdom; upon that night, a proclamation issued, stating that there were intentions to assemble men in arms, with seditious signs, and apprehending danger from their so assembling; it prohibited their meeting. The proclamation issued on a Saturday night, and it produced that satisfaction which all good men desirous of order seek to enjoy; and they felt once more the pleasurable assurance that they had a government. Appalled by this proclamation, the corps did not meet on the 8th December, as it was intended, though some few were seen dressed in the National Guard uniform, parading the streets, with a mob, crowding at their heels; but however nothing followed. They were seen, and blessed be God, they were seen no more. This proclamation, having for its object the preservation of the peace of this kingdom, and the city in particular, mildly and coolly cautioning all men against those measures, held out the consequences that must necessarily follow, if they did not obey. A proclamation which received the applause of the great and good, of the lovers of society, and of every man not lost to the sense of order and the constitution; but odious to every man who was attached to the Society of United Irishmen, and whose views corresponded with it. While I speak of that Society let me not be understood as imputing to every man who is in it, those illegal motives which I impute to the Society in general: there might have been in it no doubt many well-meaning persons; for there were men picked up industriously to lend their names, in the streets, in the lanes, in the markets, in the highways, and in the fields. Even the rich and industrious grazier was procured to lend his name. To the good, this proclamation gave pleasure and satisfaction, to the bad it became odious and detestable; and they accordingly formed the intention of bringing the government into disgrace, for issuing that proclamation. A few days after, I am not aware of the particular day, but a few days after the issuing the proclamation, the Society assembled; the proclamation was upon the 7th, the address I speak of was published the 16th of December. The meeting, therefore, must have been between the 7th and the 16th of December. The society, I say, assembled, and they agreed upon a certain address to the Volunteers of Ireland, and Dr. Drennan is there stated to have been in the chair, and the traverser, Secretary. At that meeting the address to the Volunteers was agreed upon, which is the libel charged against Mr. Rowan, as being guilty of publishing it. Under that address, this was to be done. The Volunteers of Dublin were to be called into action, and those papers were to be dispersed among them. For that purpose the several

Volunteer corps at that time existing in Dublin were summoned to assemble in a house in Cope-street, belonging to Pardon, a fencing-master, upon the 16th of December. Accordingly upon that day, the several corps of Volunteers did go with side arms to this fencing-school in Cope-street. The traverser was, I believe, at the head of one of these corps; another very celebrated name was at the head of another of them, James Napper Tandy. Who was at the head of the others I am not able to inform you. But in the afternoon of the 16th of December, several Volunteers, with uniforms and side arms, assembled in the fencing-school. In this fencing-school, gentlemen, there was a gallery, and into that gallery there was such public access that what passed below may be said to have passed in the face of the world; to such excess had those persons carried their designs as to expose them to open view, and if I state what is not true, there are one hundred persons in the Volunteer corps of the city of Dublin, out of whom a multitude may be called to contradict me. The corps, I say, assembled in that room. There stood in the middle of the room a table, and there was a vast number of printed papers brought in and placed on the table. The different corps entered into several resolutions, having taken into their wise consideration the proclamation issued by the Lord Lieutenant and Council; the necessity for issuing it is investigated, each of the corps took severally into their consideration the propriety of it, and next day published their different sentiments all expressive of strong disapprobation. So that it is manifest they were brought publicly together for a state purpose, and to debate a state matter. While these resolutions were in discussion, Mr. Tandy and Mr. Rowan were seen to take from the table the printed papers that lay upon it, and disperse them among the several Volunteers who stood around them, and to hand them from the lower room to persons in the gallery, and to persons not in their confidence; they were handed up promiscuously to any man there, and to many persons in the streets that evening and the next day; they were flung out of the windows to the mob that stood round the room. These, gentlemen, are the circumstances which preceded the publication of this paper by the traverser: it will be for you to consider with what view and purpose a paper like this was composed and thus dispersed. If you believe it was a candid and fair discussion upon constitutional subjects, or upon grievances real or supposed, you will not consider it as a libel: but if from internal evidence in the paper itself, and from the circumstances attending it, you believe it was no such thing, but that it was published with a view to raise discontents against the government—to disturb the people—to overawe the parliament, or any branch of the state, then you must find him guilty. You, gentlemen, will take the paper into your room with you; consider it coolly, and discharge from your minds, all you have heard abroad respecting it, and determine whether it be possible to give any other construction than that which the information has ascribed to it. I will submit to you, gentlemen—to you alone I desire to submit the cool examination of that paper, upon the paper itself. It is impossible with all the ingenuity (and he who comes after me on the other side has as much ingenuity as any man) to shew that it was not written for the purpose of overawing the legislature, or to

account for it in any other way. This brings me now to the libel itself, and as it has not been read to you in this court, for in open court I wish it to be read, I will read it, and make such observations as I think necessary. "The Society of United Irishmen, at Dublin, to the Volunteers of Ireland. William Drennan, Chairman, Archibald Hamilton Rowan, Secretary. Citizen Soldiers." A language, gentlemen, which excites ideas in one's mind that cannot be described. You will perceive in this publication the frippery of the French language as now used; and those ideas will be excited, which must fill the mind of every man who regards religion, society, or peace, with terror and alarm. "Citizen Soldiers, you first took up arms to protect your country from foreign enemies, and, from domestic disturbance. For the same purpose, it now becomes necessary, that you should resume them." The Society of United Irishmen, who say they are no corporation, yet as if they were a corporation, presume to tell the armed people of Ireland when it is they should assemble: Is that or is it not tending to sedition? Is it or is it not assuming a power to overawe the parliament and overturn the government itself? "A proclamation has been issued in England for embodying the militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home. From whence but from apprehended danger, are those menacing preparations for war drawn through the streets of this capital," (alluding to some cannon which were drawn through the streets a few days before to protect the inhabitants against the dangers apprehended,) "or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that Volunteer honour which was hitherto inviolate." What! did the proclamation, forbidding seditious associations and assemblies of men, with banners expressive of disloyalty, violate the honour of that glorious institution, which was raised to protect and support the constitution, that those seditious men calling themselves Volunteers were assembled to destroy, and this Society of United Irishmen did wish to overturn? That is what is stated in this, for so I will call it until you teach me another language, this abominable seditious libel. "Whence are those terrible suggestions and rumours and whispers, that meet us at every corner and agitate at least our old men, our women and children? Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you, VOLUNTEERS OF IRELAND, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." First you will observe gentlemen, they make the ancient Volunteers those whose honor was wounded and blasted by the proclamation, and then they tell them that the proclamation has summoned them to assemble in arms—strange inconsistency of rhapsody! With regard to such parts as are unintelligible, for there are many parts the most bombastical and absurd that ever appeared in any publication, I pass them over, it is not my wish to criticise them. "We will not at this day, condescend to quote authorities for the right of having and of using arms." Who had called in question the right of the people

to carry arms? Is it because the government said, that arms should not be used to the destruction or danger of the people, that, therefore, the legality of carrying them is questioned? "But we will cry aloud, even amidst the storm raised by the witchcraft of a proclamation." Is that a direct charge against government, that they laid a scheme to raise a storm? "That to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance, to your renovation must be owing its future freedom, and its present tranquillity. You are, therefore, summoned to arms, in order to preserve your country in that guarded quiet, which may secure it from external hostility, and to maintain that internal regimen throughout the land, which superseding a notorious police or a suspected militia, may preserve the blessings of peace, by a vigilant preparation for war." Now, gentlemen, here you see a reflection cast: if they meant to state a grievance, or to reason upon a point of constitution why not do it?—they had a right. But does that mark the meaning and intention of the publication? Why reflect upon legal establishments, and why endeavour to cry down a body of men, which it was well known to be in the contemplation of government to raise? They endeavoured to render odious the militia before it was created, because they foresaw it would protect the state, against the schemes which they had formed. They next inform these men, that they are not embodied as before stated, for the protection of their country, but to resist a body of men about to be constituted by government for the protection and safety of the state, but whom they are pleased to deem suspicious; is not this to raise disturbance? is not this to excite tumult? "Citizen soldiers, to arms! Take up the shield of freedom and the pledges of peace—peace the motive and end, of your virtuous institution. War an occasional duty, ought never to be made an occupation. Every man should become a soldier, in the defence of his rights; no man ought to continue a soldier, for offending the rights of others. The sacrifice of life in the service of our country, is a duty much too honourable to be entrusted to mercenaries, and at this time, when your country has by public authority been declared in danger, we conjure you by your interest, your duty, and your glory, to stand to your arms, and in spite of a police, in spite of a fencible militia, in virtue of two proclamations, to maintain good order in your vicinage, and tranquillity in Ireland." The police established in the different counties are first represented in an odious light to the Volunteers; a reflection is cast upon the militia, and now the mercenaries are stigmatized, and a distinction taken between them and the Volunteers of Ireland, thus summoned by the corporation of United Irishmen. "It is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind, in the speedy resurrection of a free constitution, of liberty and of equality." Here, gentlemen, let me call your attention. What meaning can be given to these words by the plainest man in the hall of these courts? What! was our free

constitution dead? Do the gentlemen intend by way of argument to excuse this, as the consideration of a grievance? They tell the people they have no constitution, that they might look for another. Is this a cool disquisition upon a matter, that every man has a right to inquire into? Is not this to excite tumult? Liberty and Equality! Words, gentlemen, that it would be painful to me to observe upon to the extent to which they go, words that suggest but too much to every good and reasonable mind; there is no man in this kingdom who would not lay down his life to preserve true liberty and equality; but these are but deceptions to cajole the ignorant: the vulgar abuse of a constitution which we possess to the envy of the world. "Liberty and equality, words which we use for an opportunity of repelling calumny and of saying, that by liberty we never understood unlimited freedom, nor by equality, the levelling of property, or the destruction of subordination. This is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland." Is not this traducing the government? But attend, gentlemen, to their definition of liberty. "Liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent, to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will, and that legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness." Certainly, gentlemen, the sentence is very sonorous, and agreeable enough to the ear; but to the mind it conveys nothing but this, that government is to be conducted by the will of every man, high and low, rich and poor, ignorant and learned; the people are to govern the people, and how they will do so, unhappily for mankind, has been learned from experience. Mark this next passage, gentlemen, for I confess I do not understand it. "If our constitution be imperfect, nothing but a reform in the representation will rectify its abuses; if it be perfect, nothing but the same reform will perpetuate its blessings." If our constitution be imperfect, nothing but a reform will render it perfect; if it be perfect, still the reform is necessary to keep it perfect. In whatever light it is viewed, reform is necessary, and a good constitution requires amendment as much as a bad one. I do not feel it necessary to dwell upon this, because it is so unintelligible, that it cannot deserve notice. But see next what endeavours have been used to render odious among the people, those forces upon whom our peace and tranquillity depend. "We now address you as citizens, for to be citizens you became soldiers, nor can we help wishing that all soldiers, partaking the passions and interests of the people, would remember that they were once citizens, that seduction made them soldiers, but nature made them men." How will my learned friend when he comes to speak of this part of the case satisfy you, that it was necessary in a publication of this sort, recommending a reform in parliament, and to be disseminated among thousands,

to tell the soldiers, the forces of the state, that their profession was dishonourable, that they were imposed upon, that they should not be entrusted with the protection of the state? Gentlemen, I am unwilling to dwell upon these passages, it is but necessary to mention them to shew their danger, if they deserve consideration you will give it to them, if not, you will not waste your attention upon them. "That nature made them men." It required no authority to satisfy them of that. "We address you without any authority, save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce. Here we sit without mace or beadle." What they allude to, I suppose you, gentlemen, apprehend; they seem to disdain any distinction in civil institutions. "Neither a mystery, nor a craft, nor a corporation.—In four words lies all our power, **UNIVERSAL EMANCIPATION** and **REPRESENTATIVE LEGISLATURE**." In these four words lies all the power of the United Irishmen, according to this publication, approved of by the traverser; he himself a member of that society, and secretary of the meeting which composed it. "Universal Emancipation!" By that I presume is meant the giving a right of voting, to every man in the community. "And Representative Legislature!" The meaning of these words, is but too obvious. The constitution is often in the mouths of men, when the destruction of it is in their hearts. If the plan of these people were carried into effect, where would be the House of Peers?—for our legislature, gentlemen, consists of King, Lords and Commons. When government is guided by the will of all the people and their force carried into action, where will be the House of Peers? Where will be our constitution? buried in the anarchy of republican power, formed from the dregs of the people. A government consisting of all the people, guided by the will of all the people; what sense but this can be put upon these words? If indeed the context of the paper shews you, gentlemen, that any thing else was meant, than as I interpret the words, you will take it altogether in that sense, in which it appears to have been meant. God forbid I should endeavour to wrest any thing to impute guilt to the gentleman, who now stands at your bar, that the whole of the paper does not warrant! But if the words bear that meaning which I give them, who will say, that guilt shall not be imputed to him? You will form your opinion from reading the whole, and comparing the several parts with each other. Here comes a sentence which will puzzle you a little, but which with some comment may be understood. "Yet we are confident that on the pivot of this principle, a convention, less still, a society, less a single man, will be able first to move and then to raise the world." Here is an open declaration of their wish to raise the people, not only of this country but of the whole world; a proof of peaceable intent. "We therefore wish for Catholic emancipation without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is—wide enough to admit three millions—it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer.

The Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect, but to society—to no creed, but Christianity—to no party, but to the whole people. In the sincerity of our souls, do we desire Catholic emancipation; but were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own. For both these purposes it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization,” (French language still occurring with French ideas) “is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people relax into inattention and inertness; the union of affection and exertion will dissolve; and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risk the tranquillity of the island.” Gentlemen, the paper mentions here the common enemy; as to who is meant by the expression, you will judge; did they mean those who were about to defeat their machinations, and who would not commit the tranquillity of the island to the convention to be assembled? It says “an assembly of a similar nature and organization is necessary.” These are Gallic sentences and suited only to the soil of France. “Local insurrection may commit the character and risk the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation, unless the sense of the Protestant people be, on their part, as fairly collected and as judiciously directed; unless individual exertion consolidates into collective strength; unless the particles unite into one mass, we may perhaps serve some person or some party for a little, but the public not at all. The nation is neither insolent, nor rebellious, nor seditious. While it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to serve their country in mercy to themselves.”——An address to the Volunteers to obtain universal emancipation!—holding out, that this kind of remonstrance should be attended to, before the power of the nation should be exerted. What meaning does a common understanding annex to these words? Was it not a threat? Was it not to spirit up the minds of the people against the members of parliament? Was it necessary for the purpose of cool investigation, or to obtain constitutional redress, that the people should exert their power? and to threaten parliament, by telling them there was a force to be raised against them? Unless a reasonable account is given why this language was inserted, and what the meaning of it was, I must presume, it was for the purpose I mention. “The fifteenth of February approaches, a day ever memorable in the annals of this country as the birth-day of new Ireland; let parochial meetings

be held as soon as possible—[here you have an exact delineation of the French government]—let each parish return delegates, let the sense of Ulster be again declared from Dungannon on a day auspicious to union, peace, and freedom, and the spirit of the North will again become the spirit of the nation.” Now, gentlemen of the jury, you will mark this next sentence, and it will be a clue to the whole. “The civil assembly ought to claim the attendance of the military associations, and we have addressed you, citizen soldiers, on this subject, from the belief, that your body, uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends.” The nation is in danger from foreign foes and from domestic enemies—so they state. The proclamation calls forth the forces of the state. The United Irishmen raise their audible voice, and call the people to arms. For what? Is it to assist the government to repel the foreign enemy, and seditious foe? But how? A convention is to be assembled, and they are to call around them the national forces. The convention was to meet at Dungannon—there assembled, were these forces to repress foreign foes and domestic sedition? Gentlemen, it is but too obvious for what purpose this was intended: this sentence speaks the language of the whole of this paper—and if it had been drawn with more art than it is, here is the clue to the whole:—the force of the nation was to be assembled under the controul of the convention, assembled under the great seal of the United Irishmen, who say they are not a corporation; but who have a corporation seal:—For what purpose? to obtain universal emancipation and representative legislature! They are held up as such a force and controuling power, as must produce that effect upon the king, lords and commons. An effect which they profess to have designed for the good of their country—if they did, they should seek its accomplishment, by reason and by argument. But to publish a call to arms to that power and authority which for years this country has respected, and from which, certainly, since 1784 every blessing in society has been derived (and every man who looks for those blessings of life, otherwise than by a due regard to all ranks of men, blasphemes the God which made us all)—I say, to call upon the whole body of the people to rise in arms, and be their own rulers, is a species of government, which, when it comes, will be an equal misfortune to the poor and the rich. The rich would lose that which they enjoy, and more—the power of contributing to the necessities of the poor—industry will no longer continue to have the motives to labour and those habits of economy which the protection of a mild constitution encourages, but the people will be turned out to a system of plunder, robbery and murder, such as we find prevailing in another country. The paper goes on and recites, “We offer only a general outline to the public, and meaning to address Ireland, we presume not at present to fill up the plan or pre-occupy the mode of its execution, we have thought it our duty to speak—Answer us by actions. [An open invitation to force and violence.] You have taken time for consideration. Fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented?” These Volunteers of 1782 had not all these schemes in view—but this Society

here expressly tells the people, with arms in their hands, that they remain unrepresented; and adds, "How many nations in this interval have gotten the start of Ireland? How many of our countrymen have sunk into the grave?" What is meant by nations having got the start of Ireland? is it the revolution in France; they indeed have gotten the start of Ireland in calamity and distress, long may they hold their distance, and that long may be the period before we shall overtake them, is my most sincere and earnest wish.

Such is this paper—I have read it accurately. Gentlemen of the jury, it is for you to consider the whole of it, and determine whether it was published by Mr. Rowan, and whether it be a libel or not? If you should be of opinion that Mr. Rowan is guilty of publishing this paper, then you are to consider whether it is a libel or not? Gentlemen, it is the peculiar felicity of this country, the great blessing of our constitution, that we have a trial by jury; in France it is polluted; but it is the boast of our constitution that we have a trial by jury, and the great preservative of that blessing and of the constitution itself, is the liberty of the press; that is the great bulwark of our free constitution, we have a trial by jury, and of the freedom of the press you are the guardians. You, gentlemen, are by the constitution appointed to decide upon all these questions touching the freedom of the press. The freedom of the press cannot be destroyed but in two ways, first, by the overweening power of the crown, 2dly, by its own licentiousness, corrupting the minds of the people; and when it is destroyed, then will our constitution be at an end. While the press is left open to cool and fair discussion upon legal and public topics of grievance and constitution, so long will the freedom of our constitution endure, and whenever an attempt is made to controul it, you will step in and guard and protect it as you would guard your property, your lives, and your liberties; you will secure it from licentiousness. Where its licentiousness is not punished through the weakness or timidity of a jury, its freedom can no longer exist. What does the paper which is the subject of the present question purport to be? it looks for a reform of parliament, it calls to arms the citizens under pretence of supporting the government by resisting it, by speaking of grievances which cannot be endured, it is overawing the parliament. If such licentiousness be tolerated, then the freedom of the press will be destroyed. You, gentlemen, will consider whether this paper contains in itself internal evidence to shew that the motives of its publication were not for the purpose of reasoning with the people, or for the necessary correction of any evil in the constitution, but to excite sedition and tumult. If in that case you believe that Mr. Rowan published it, then you must find him guilty. If, on the other hand, you are of opinion, that this was a cool and dispassionate paper, reasoning with the people in a becoming manner, acknowledging the authority of the law, then you will acquit him. Further, let the tendency of the paper be what it may, if you are of opinion, he did not publish it, then you must acquit him. We will produce a witness to shew he published an individual paper—we will prove that he took several others and dispersed them abroad—if you believe the evidence, it will be impossible but that you must be satisfied he is guilty. Thus stands the evidence. I have stated that the traverser was Secretary

to the United Irishmen. It will be proved thus:—he published that paper; if he did, he acknowledged the contents of it to be true, and the paper states him to be secretary of the Society. Gentlemen, such is the case as it appears to me on the part of the crown. I will not pretend to anticipate what may be offered by the gentlemen on the other side. Two topics, however, have occurred as likely to be introduced:—one is, the case of the Volunteers—the other, the functions of a jury under the late act of parliament. Upon the first, I have said abundance to satisfy you. I will suppose however, that this paper was addressed to the old Volunteers: what then? The tendency of the paper was to excite those Volunteers to commit actions that would tarnish the honour acquired by their previous conduct. Let them shew that the proclamation (against which this was a counter proclamation) went against the old Volunteers—it meant no such thing—it describes them so and so. But there were among the old Volunteers men actuated by new principles and new motives, that it became the duty of government to suppress them. For your sake they did so—no government should be influenced but by the prosperity of the whole state. But in what respect did these men resemble the old Volunteers? Not in a single feature: these men were assembled by the call of the United Irishmen in Back-lane; the ancient Volunteers were assembled by the call of government and the Lord Lieutenant, who distributed arms among them from the arsenal, for the public defence; they added to these out of their own pockets whatever they thought necessary; they were collected to support that constitution which is now sought to be overturned. Were these new Volunteers of that description? Were they so formed? How were they equipped? The green cockade was adopted in the place of the black. I have no necessity for this; but fearful that men will have recourse to such topics to cajole you, I think it necessary to take notice of them. Secondly, as to the act of parliament within this kingdom, I am not aware that it operates here; but even by it, as it now stands and I told you so before, you have a right to enter into the guilt or innocence of intention upon this occasion, as you would upon the trial of any other offence. Gentlemen, to you, and most willingly, I commit this case; I desire no more than that you will by your verdict vindicate the freedom of the press and punish the licentiousness of it.

First witness for the prosecution.—John Lyster.—Examined by the
PRIME-SERJEANT.

Q. Do you recollect the 16th of December 1792? A. I do.

Q. Do you recollect having been at any place that day? A. I do.

Q. Where? A. At one Pardon's house in Cope-street.

Q. Were there many people assembled there? A. There were to the amount of 150 or 200, with side-arms and uniforms; there was a table in the room.

Q. Did any person, and who, sit at that table? A. There was Mr. Hamilton Rowan and Mr. Napper Tandy at it, and a good many others.

Q. (By the court—What do you mean by uniforms? A. Regimental uniforms—scarlet with different facings.)

Q. Did you know the person of Mr. Rowan? A. I do.

Q. (By the court—Do you know him now? A. He is just opposite to me.)

Q. Was he sitting at the table? A. At one time he was—at another time he was standing.

Q. What brought you there? A. Merely curiosity.

Q. How was it excited? A. I happened to pass through Cope-street, and saw a great crowd—I asked what it was—they said it was a meeting of the United Irishmen. My brother was with me, and we went into the room; we were in coloured clothes, and to the best of my recollection, Mr. Rowan said, no gentleman with coloured clothes could be there; but mentioned, that there was a gallery to which we might go,

Q. Did you perceive any person perform any particular part in that assembly? A. I perceived Mr. Rowan about the table very busy—he had papers in his hand, and there was pen and ink on the table; he walked about the room, with the papers in his hand. Napper Tandy came up to him, read part of one of the papers—they were handed about—some were handed up to the gallery—I got one of them, and so did my brother, and several others in the gallery along with me.

Q. Look at that paper—is that the one? A. This is the paper I got there.

Q. Was it one of the papers handed up to the gallery? A. It was one of the papers handed by Mr. Rowan to some of the people about him, and by them handed up to the gallery.

Q. Your brother also got one? A. He did.

Q. Was there a number distributed? A. About 30 were thrown up to the gallery.

Q. Have you any reason to ascertain that to be the particular paper? A. I have, because it has my own hand-writing upon it.

Q. You made that memorandum upon it? A. I did.

Q. Read it. A. "I got this paper at a meeting of the United Irishmen in Cope-street, the 16th of December—it came through the hands of Archibald Hamilton Rowan."

Q. (By the court—You say one of these papers was read by Mr. Rowan, how do you know that? A. Because I attended to the words he read, and they agreed with what are in this paper.

Q. Can you swear that one of these very papers was read by him? A. I can swear that part of the words were read, I cannot swear to the whole.)

Cross-examined by the RECORDER.

Q. At what hour was this? A. To the best of my knowledge it was between one and two.

Q. Was this upon the 16th of December? A. It was upon the 16th of December, 1792.

Q. It was upon a Sunday? A. I believe it was.

Q. How long did you remain there? A. For about three quarters of an hour.

Q. There were about one or two hundred Volunteers below stairs? A. There were.

Q. Were they dressed in the uniforms which you had seen the old Volunteers were? A. I cannot exactly say as to the facings of the uniforms—some of them were green.

Q. Had not some of the old Volunteers green uniforms? A. They had, and there were some of the old Volunteers in the room.

Q. Were not the old Volunteer uniforms scarlet faced with different colours? A. They were.

Q. Were all these men sitting down, or walking up and down? A. They were walking—there were very few forms or chairs in the room.

Q. Were they conversing? A. They were chatting and talking.

Q. Did you see many of them go up to this table where the papers were? A. I saw a good many of them go up to it, in the course of their walking back and forward.

Q. Did you see many take papers off the table? A. I did not see very many of them—I saw four, or five, or six of them.

Q. They read them and handed them about? A. Yes, I saw them do so.

Q. Did you not see them hand them about, from one to another? A. I did.

Q. By virtue of your oath, did you ever see that paper in your hand, in the hands of Mr. Rowan. A. I swear it was among the parcel upon the table, some of which were handed up to the gallery—I cannot say it was touched by his fingers.

Q. (By the court—You say it was among the parcel handed to the gallery? A. Yes.

Q. By whom? A. It was in the bundle handed by Mr. Rowan to several there, and by them handed up to the gallery.)

Q. Did that bundle of papers pass through the hands of more Volunteers than one, before it came to the gallery? A. I believe it did.

Q. Did he hand several parcels? A. I only saw him hand one to a Volunteer, who gave it to another.

Q. Then it went through the hands of several, before it got to the gallery? A. It did, through four or five.

Q. Can you tell the name of any man through whose hands it passed? A. I cannot—I was not so well acquainted with the gentlemen.

Q. When this bundle of papers was handed up, do you know who in the gallery received it? A. They were broken and separated, I held out my hand and got one of them—my brother another, and other people got some.

Q. Were there many in the gallery? A. There were a great many.

Q. Did every man there get one? A. I cannot say—every one that chose to take one, might.

Q. Did they hand them about in the gallery? A. The next man saw what his neighbour got; they gave them about; but I never parted with mine till yesterday.

Q. Did you know any other Volunteers below stairs besides Mr. Rowan? A. I did, Mr. Tandy; and to the best of my recollection, there was a Mr. Kenny whom I knew before.

Q. Did several of the Volunteers below stairs hand up papers to the gallery or not? A. I dare say several of them did.

Q. Did not several men take papers from the table? A. I suppose

they did—I did not observe whether they did or not. Several, as they passed back and forward, went to the table, and might take them off.

Q. Do you not know that several did take papers off? A. Several of them did.

Q. You saw those papers passed through the hands of four or five Volunteers, before they came to the gallery? A. A parcel of the papers among which this was, came up.

Q. How came you to pitch upon that paper so accurately? A. I was the first, who put out my hand.

Q. Did you watch this particular paper? A. Not that particular paper, but the bundle in which it was.

Q. Will you swear, there were no other papers handed up? A. To the best of my knowledge, there were not.

Q. When did you put that memorandum upon it? A. The very day I got it.

Q. Where? A. In my lodging.

Q. Did any body advise you to make a memorandum? A. No one did:—I generally, when I get an improper paper, make such memorandum.

Q. For what purpose? A. Just a fancy of my own.

Q. Did you make that memorandum in order to enable you to prove it upon a prosecution? A. I did not.

Q. To whom did you first communicate your having this paper and the memorandum? A. I shall tell you. There was a brother of mine who did business for the late Mr. Adderley—there were different accounts between them—my brother went to the Castle to Mr. Hobart to shew the accounts—Mr. now Lord Hobart, desired my brother to call upon Mr. Pollock, the agent for young Mr. Adderley.—Mr. Pollock said he had heard that I and my brother were present at the meeting in Cope-street, and that he understood it was a very improper meeting.

Q. How long was this after the meeting? A. I cannot say.

Q. Was it a week or a month? A. I cannot recollect. Mr. Pollock said, "You have been there I understand." I said, we were, and that we saw such things going forward. I had one of the papers in my pocket and shewed it to him. He said, Mr. Hobart heard I was there, and that I should give information of it as it was against the king and constitution. I said I would not encourage any thing against the king, but would do what was proper. Mr. Kemmis came to my lodging next day—the circumstances were talked over—we said we would make no delay in making any information concerning it, and it was in that manner they came to a knowledge of it.

Q. (By the court) What Mr. Kemmis? A. The Crown Solicitor.

Q. Were you of any profession at the time you attended this meeting? A. I was not.

Q. You are in the army now? A. I have that honour.

Q. What Commission? A. An ensign's commission.

Q. How long since did you obtain it? A. I have been gazetted since the 27th of June last.

Q. In what regiment? A. In the 40th.

Q. You say you heard some of that paper read? A. I do, Sir, the greater part of it.

Q. Was this when all the Volunteers were walking about? A. Some were walking about, others gathered about the place, while the paper was reading by Mr. Rowan.

Q. Can you point out any part of the paper you heard read. A. I can.

Q. Show such part as you heard? A. He began, "The Society of United Irishmen," and so on.

Q. He did not read it all? A. He read the greater part.

Q. Can you say where he stopped? A. I cannot.

Q. Did you obtain your commission by purchase? A. No, I did not; I got it through the interest of a lady I have the honour of being related to—Lady Hobart.

Q. Pray, were you ever a witness to a bond or two bonds executed by your father to one of your brothers? A. I was.

Q. To your younger brother? A. Yes.

Q. Was there any suit or issue directed to try whether the bond was genuine or a forgery? A. There was an issue to try whether it was my father's bond or not. I do not say it was to try whether it was a forgery.

Q. Was it not alleged by your father and your elder brother that it was a forgery? A. My elder brother thought to keep my younger brother out of the property, and I supposed he alleged it was a forgery. I am sorry to mention these matters here. My father filed a bill against us, alleging the bonds to be forgeries, and Mr. Simon Butler,* a very honourable gentleman, to whom I am under many obligations, undertook the business, and we recovered the money. I see the defendant has brought parchments into court this day. I saw Mr. Blake who is to give evidence against me here. If I was aware of these things being mentioned, I should have the gentleman here who could prove them—I speak of the bonds for £500.

Q. Was there not an issue to try them? A. There was an order to have it tried in the country.

Q. Were you not examined in the country upon that trial? A. I believe I was.

Q. You are not sure? A. I am sure.

Q. Did you swear to the due execution of these bonds? A. To the best of my knowledge I was examined—I was witness to the bond.

Q. Can you swear whether you were examined or not? A. I cannot say positively whether I was or not—one of my brothers was examined—My elder brother, I believe, cried out to the jury, that he would leave it to a reference.

Q. You cannot swear positively whether you were examined or not? A. I cannot.

Q. Do you not believe you were examined? A. I cannot swear positively I was; I do believe to the best of my recollection I was—but I cannot swear positively.

Q. How long is this ago? A. It is a good while—I cannot exactly say.

Q. Is it three years ago? A. I believe it is.

* An intimate friend of Mr. Rowan.

Q. Only three years ago and you cannot say positively whether you were examined or not? A. I know I was to be examined, but I cannot say whether I was or not.

Q. Were you not examined to the best of your belief? A. To the best of my recollection I was; but I cannot swear positively.

Q. Do you recollect the judge before whom that issue was tried? A. I do.

Q. Before whom was it? A. Before one of their lordships on the bench (Judge Boyd.)

Q. Were there not more witnesses than one, examined to shew it was not your father's hand writing? A. I do not know, I believe there were many examined, but they did not say positively it was not my father's hand-writing.

Q. What verdict was there? A. There was no verdict at all.

Q. Was it not because the jury could not agree? A. No, it was not.

Q. Will you swear to that? A. I will not; but I think my elder brother called out, perceiving himself wrong, and said, he would leave it to a reference.

Q. Was it ever left to the reference? A. It was.

Q. What was done? A. I cannot say, I was not there; but most people imagined the referees were wrong in doing as they did.

Q. Did they give the amount of the bonds? A. They did not.

Q. What was the amount of the bonds? A. One was £500 the other £300, it is not yet decided, my brother intends to bring it into the courts to set aside the award.

Q. (By the court. Do you know what they allowed? A. I know not.

Q. Did you ever hear? A. Some hundreds.)

Q. Did you ever hear it was £200? A. I did not.

Q. Two hundred are some hundreds? A. They are, but as I was not to get any of the money, I believe nothing about it.

Q. Did not a gentleman of the name of Walter Lambert file a bill against you? A. He did.

Q. Was he executor of Peter Hamilton? A. He was.

Q. Why did he file a bill? A. It is a very unjust bill. Peter Hamilton had married my sister, he became insane and I went to stay with him in a madhouse in England; I had no support from my father at that time, and I thought Mr. Hamilton's relations should pay my expenses and support me; a Mr Nagle recommended me to bring Mr. Hamilton home; I did by force put him on board a ship and brought him to Cork, and from thence home to Galway; he had intervals of reason, and he gave me a bond for £150 part of which was paid. I went to Judge Kelly, a relation of his, to interfere; in some time I got a note for the money, and after his death the executor filed a bill against me.

Q. Did he not charge the note not to be the hand-writing of Peter Hamilton? A. No: the note was in my hand-writing with Mr. Hamilton's name signed by himself.

Q. Did you ever recover any part of it? A. No, it is not yet determined.

Q. Is there an injunction against you? A. No: I believe not; I

was nonsuited by the neglect of Mr. Morton, my attorney, who left the papers in town, when the trial came on in the country.

Q. After you drew this note, Mr. Peter Hamilton put his name to it? A. Yes.

Q. And you sued for it, and did not recover? A. He was as perfectly in his senses when he put his name to it as I am; he transacted his own business as if he had not been mad.

Q. Did he not live many years after this? A. No, he did not: he might have lived many years if he had not shot himself.

Q. (By Juror, Mr. MINCHIN. Did you see many more of the papers handed up? A. I did.

Q. Were there any of another tendency? A. There were not.)

Second Witness, Mr. William Morton.—Examined by the
SOLICITOR-GENERAL.

Q. Do you remember being at Cope-street, Dublin, on the 16th of December, 1792? A. I do.

Q. Do you recollect to have seen anything there, or to have got admission into any place there? A. I do; I saw a number of men assembled there, for what purpose I cannot say; they were arrayed in military dress.

Q. What were they doing? A. They drew up a form of resolutions at a table.

Q. Do you recollect to have seen any particular person there? A. I recollect to have seen Mr. Hamilton Rowan and Mr. Napper Tandy.

Q. (By the court.) Do you know Mr. Rowan? A. I do.

Q. Did you know him before that day? A. I have seen, but was not acquainted with him.

Q. Do you know him now? A. I do; he is there, (pointing to him.)

Q. Did or did not Mr. Rowan appear to take an active part in that meeting? A. He did.

Q. Do you recollect anything about papers of any description? A. I shall mention what I know: I gained admission into the gallery, there were a number of papers or advertisements brought in, as if wet from the press, and distributed about.

Q. Were they in large or small parcels? A. There was a large parcel in a man's arm, wet as from the press.

Q. What became of them? A. They were laid upon the table, and some were given to Mr. Napper Tandy.

Q. Did you see any of them? A. I did.

Q. Had you an opportunity of reading them? A. I had.

Q. How came you to have that opportunity? A. I saw some of them taken up by Mr. Rowan and delivered to some of the members, and by them handed up to the gallery. A gentleman near me received one of them; I immediately took it out of his hand: there were many thrown up; one was read by a gentleman, and I remember while he read it, a number were thrown out of the windows to the mob, who desired more of them, and accordingly they were sent to them.

Q. Was the paper read in a loud manner; did every man know what was doing in the gallery? A. Every man could hear it I believe.

Q. Did you keep one of these papers? A. I did.

Q. Where is it? A. I gave it to a person, who, I understand has since mislaid it.

Q. Do you recollect any part of it? A. The beginning of it: it was from the association of United Irishmen: it began—"To arms citizens, to arms!"

Q. Did you hear it read? A. I did.

Q. When it was begun, did that passage make an impression upon you, that you remember it? A. It was a young gentleman in the gallery who read it through; the people there called out, read it for the benefit of us all.

Cross-examined by Mr. FLETCHER.

Q. Are you of any profession? A. I am a gold-beater.

Q. Do you get your livelihood by that? A. I am an apprentice, serving my time to that business.

Q. Is your father living? A. He is not.

Q. How came you to be at this meeting? A. It was on a Sunday, and I was unemployed. I met a young gentleman who asked me to go to Cope-street. I went from curiosity.

Q. At what hour did you go there? A. It was in the forenoon, from eleven to one. There were several gentlemen in uniform.

Q. What was their uniform? A. Scarlet faced with green; there were some light infantry in their jackets; there were different corps.

Q. Upon your oath, were not all the uniforms you saw, the appropriated uniforms of the old Volunteer corps? A. I cannot say.

Q. Do you not believe they were? A. I suppose they were; but I had been absent, and had not seen them for some time.

Q. You were in the gallery when you saw those bundles of papers? A. I was.

Q. Were there more than one? A. Not that I remember; I saw but one.

Q. Did not several persons go up to the table and get these papers? A. I cannot say; I believe not. I was in the gallery; there was a beam in the middle of the room, and when they went to the upper end of the room, the beam prevented me from seeing them.

Q. You said you saw Mr. Rowan take one of these papers and hand it to some other person? A. I did not say one: I saw him take some papers, and had them about.

Q. What papers were they? A. I cannot say, whether he took them off the table or not. He took part of those that came in: several of the members asked him for some; I suppose he gave them.

Q. Supposition will not do; say upon your oath, what you saw take place with regard to Mr. Rowan and these papers? A. When they came in, Mr. Rowan and Mr. Tandy took some of them, they delivered them to the Volunteers; one of the Volunteers threw some up to the gallery, and I got one.

Q. Did you not say there was but one bundle? A. I did.

Q. Did you say, that from your situation you could not see what passed at the table? A. Part of the table I could see.

Q. Were you in such a situation as to see everything which passed

at the table? A. The Volunteers were walking up and down, and sometimes I could not see everything there.

Q. Do you know the names of any of the persons from whom these papers came to the gallery? A. No. I did not know any one in the room but Mr. Tandy, and Mr. Rowan.

Q. Can you say who the person was who read the paper, in the gallery? A. I cannot. I never saw him before.

Q. Did he read it more than once? A. I cannot say.

Q. Had you any of the papers in your hand, when he read it? A. I had.

Q. You kept that paper which you received? A. I did for some time.

Q. How long? A. I do not recollect: I kept it a week or less.

Q. Whom did you give it to? A. An acquaintance of mine.

Q. Has he no name? [Here the witness hesitating in his answer, Mr. Sheriff Giffard called out, that he was the person to whom the witness delivered the paper, upon which the witness said it was to Mr. Giffard.]

Q. Why did you resort to him? A. I had no reason: I gave it by accident.

Q. You had no reason? A. None, but that he was the first person I met that I was acquainted with.

Q. Did you not keep it a week? A. No.

Q. Did you keep it five days? A. No, I believe not; for I think I gave it to him the day after I got it.

Q. When you said you gave it in a week, did you mean the day after? A. It was less than a week.

Q. Did you mean to convey the idea that you had it but one day, when you said you had it less than a week? A. I did.

Q. Upon your oath that was the meaning you intended to convey? A. It was.

Q. Upon your oath you say so? A. I do.

Q. Do you generally speak in riddles of that kind? A. No.

Q. How long did you keep that paper? A. Not one day: on the same day that I received it, I gave it to Mr. Giffard.

Q. This meeting was in the forenoon? A. It was.

Q. How long after the paper was distributed did you continue at this assembly? A. I do not remember when it broke up.

Q. Was it before or after dinner? A. It was before dinner.

Q. (By the Court. Did you stay till the assembly broke up? A. I did.)

Q. Can you say how long you remained in the place after getting that paper? A. I cannot say.

Q. What do you believe? A. Half the time was not elapsed when the papers were distributed, but I do not recollect; there was a young man with me and we were in conversation.

Q. What became of you afterwards? A. We separated: he went to dinner I suppose.

Q. Where did you go? A. I went to Mr. Ryan.

Q. You dined there? A. No.

Q. Who is Mr. Ryan? A. He is a surgeon.

Q. Did you shew the paper to Mr. Ryan? A. No; but I met Mr. Giffard there and I gave it to him.

- Q. Did you expect to meet him there? A. I did not.
- Q. Of what business is Mr. Ryan? A. He is a surgeon.
- Q. Does he get money by any other business? A. I do not know.
- Q. There is a paper printed in the house where he lives?
- A. There is.
- Q. What paper? A. The *Dublin Journal*.
- Q. Does not Mr. Ryan superintend the publication of that paper?
- A. I believe he does not.
- Q. Who is the proprietor of that paper? A. George Faulkner.
- Q. Do you believe he conducts that paper now? A. I am not to know any thing about it.
- Q. But can you not form a belief? A. I cannot form a belief. I do not know.
- Q. Did you never hear that Mr. Giffard had some interest in that paper? A. I did hear it.
- Q. Do you believe it? A. I do not. I know not.
- Q. What do you believe? A. I believe he has not.*
- Q. Did you ever hear it? A. I did.
- Q. Why do you disbelieve it? A. I heard it from several persons.
- Q. And you do not believe it? A. I do not.
- Q. You do not believe that he has any connexion with that paper?
- A. I do not believe it.
- Q. Have you heard it contradicted? A. I have.
- Q. By whom? A. I do not know.
- Q. What relation are you to Mr. Giffard? A. His nephew by marriage.
- Q. And will you, his nephew, say he has not any interest in that paper? A. I do.
- Q. Is not Mr. Ryan a relation of Mr. Giffard? A. He is.
- Q. What relation? A. I cannot say.
- Q. Who pays the rent of the house where Mr. Ryan lives? A. I do not know.

This witness retired, and then the paper† produced by Mr. Lyster

* This paper (the *Dublin Journal*) was originally established by Mr. George Faulkner, one of the aldermen of the city of Dublin, and was ably conducted by him for upwards of fifty years. His house was the rendezvous of the leading parliamentary, literary, and political men of his day. He associated with persons of the highest rank, and was in the habit of entertaining them, it is said, in a style of splendour. From the period of his death, his paper gradually declined in spirit and integrity till its doom was fixed, where its fanatical career commenced on its coming into the hands of one of the most illiterate and illiberal men, that ever became ambitious of conducting a public journal. This person, Mr. John Giffard, better known by the complimentary soubriquet of the "dog in office," was brought up in the Blue Coat Hospital. He was taken by the hand, by a person of the name of Thwaites, a brewer, and was brought up to the business of an apothecary. He married a young woman in humble life in the county of Wexford, and set up as an apothecary in the town of Wexford; but got maltreated in a brawl by a man of the name of Miller, and removed to Dublin where he set up in the business of an apothecary in Fishamble street, in 1771. Just previous to the trial of Hamilton Rowan, in 1794, for a seditious libel, it was found necessary to have a jury which could be relied upon for a conviction, and a sheriff that could be trusted in such an emergency.—Mr. Giffard was made sheriff some months previous to the trial. Madden's *United Irishmen*, vol. 2, 1st series, p. 85.

† See the paper at large in the information.

was read—upon which the case for prosecution was rested.

Lord CLONMEL, Chief-Justice, asked the counsel for the defendant whether they wished to have the information read, in order to compare it with the publication.

Mr. CURRAN.—We have instructions not to take any captious objections, and therefore do not think it necessary to accept of the offer of the court.

Mr. ATTORNEY-GENERAL.—A good reason why, Mr. Curran; there is no error in the record.

Evidence for the Defendant.—Francis Blake, Esq.—Examined by

Mr. CURRAN.

Q. You live in Galway? A. I live now in Dublin, but I did live in the county of Roscommon.

Q. Do you know a gentleman who was examined here to-day, of the name of John Lyster? A. I believe I do.

Q. The son of Thomas Lyster of Grange? A. I do know him.

Q. Do you think that Mr. Lyster is a person who would deserve credit, in what he would swear in a court of justice? A. That is a very hard question to answer, for I never had any dealing with him, so as to say from my own knowledge whether he should be believed or not.

Q. I only ask your opinion; is it your opinion that he deserves credit upon his oath? Do you believe it? A. I cannot say he is: I might hesitate.

Q. Can you form an opinion? A. I have made all the answer I can—I cannot say that he does not deserve credit—at the same time I might have doubts.

Lord CLONMEL.—He only says he might hesitate—he has doubts.

Mr. John Smith.—Examined by the RECORDER.

Q. Do you know John Lyster? A. I have seen him, I have had no acquaintance with him.

Q. Have you ever seen him examined as a witness? A. I have.

Q. Where? A. At Galway summer assizes, 1791.

Q. Was he the son of Thomas Lyster of Grange? A. I believe he was.

Q. Did you see him on the table to-day? A. I think I did while I was standing upon the steps of the Exchequer.

Q. Is it your opinion that he is a person to be believed upon his oath in a court of justice? A. I cannot form a general opinion, with regard to the matter upon which he was examined to-day: from what I know of him I would give very little credit to him.

Q. What is his general character?

Mr. ATTORNEY-GENERAL.—I object to that question.

Q. (By the Court.)—You are a man of business; upon your oath, do you know enough of this man to say whether you think he ought to be believed upon his oath? A. I do not; for I know nothing of him, but what I saw at the trial in Galway.

Cross-examined by Mr. ATTORNEY-GENERAL.

Q. Are you a member of the United Irishmen? A. I really am not.

Mrs. Mary Hatchell.—Examined by Mr. FLETCHER.

Q. Do you know Mr. John Lyster, son of Thomas Lyster of Grange? A. I know Mr. John Lyster.

Q. Is he in the army? A. He is an ensign of the 40th.

Q. Have you known him long? A. I have known him well for better than a year; by sight I know him a long time.

Q. From all that you know and have heard of this gentleman, can you form an opinion whether he is a person to be credited upon his oath? A. From my opinion he is not.

Cross-examined by Mr. SOLICITOR-GENERAL.

Q. Pray Madam where do you live? A. Upper Ormond-quay.

Q. You know a brother of Mr. Lyster? A. I do well: it calls painful remembrances to my mind by talking of him.

Q. Was there any particular infidelity imputed to this gentleman or his brother? A. George William Lyster was married to a daughter of ours (my husband is living.)

Q. Who is George William Lyster? The younger brother of John Lyster.

Q. Your first intercourse then originated from that connexion between George Lyster and your daughter? A. Yes: George William Fitzgerald Lyster married my daughter.

Q. It was not with your consent? A. It was not.

Q. You have not been induced to any painful necessity of breaking the marriage? A. John Lyster has found means to take away his brother from his wife, insisting that he had another wife.

Q. (By the jury.) How do you know that John Lyster is the person who inveigled his brother from your daughter? A. His elder brother told me so.

Q. (By the court.) Is that the reason you do not believe him? A. It is one of the reasons.

Q. What other reasons have you? A. Conversations with his elder brother.

[Here the case was closed by the defendant.]

A few moments before the defendant's counsel rose, a guard of soldiers was brought into the court-house by the sheriff.

Mr. CURRAN, for defendant—Gentlemen of the jury, when I consider the period at which this prosecution is brought forward; when I behold the extraordinary safeguard of armed soldiers resorted to, no doubt for the preservation of peace and order: when I catch, as I cannot but do, the throb of public anxiety which beats from one end to the other of this hall; when I reflect on what may be the fate of a man of the most beloved personal character, of one of the most respected families of our country; himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern, it is in the honest simplicity of my heart I speak, when I say that I never rose in a court of justice with so much embarrassment, as upon this occasion.

If, gentlemen, I could entertain a hope of finding refuge for the

disconcertion of my mind, in the perfect composure of yours; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgments undisturbed and your hearts at ease, I know I should form a most erroneous opinion of your character: I entertain no such chimerical hope; I form no such unworthy opinion; I expect not that your hearts can be more at ease than my own; I have no right to expect it; but I have a right to call upon you in the name of your country, in the name of the living God, of whose eternal justice you are now administering that portion which dwells with us on this side of the grave, to discharge your breasts as far as you are able of every bias of prejudice or passion; that, if my client is guilty of the offence charged upon him, you may give tranquillity to the public by a firm verdict of conviction; or if he is innocent, by as firm a verdict of acquittal; and that you will do this in defiance of the paltry artifices and senseless clamours that have been resorted to in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement which you have just heard on the part of the prosecution. I know well the virtues and the talents of the excellent person who conducts that prosecution; I know how much he would disdain to impose on you by the trappings of office; but I also know how easily we mistake the lodgment which character and eloquence can make upon our feelings, for those impressions that reason and fact and proof only ought to work upon our understandings.

Perhaps, gentlemen, I shall act not unwisely in waiving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncoloured statement of mere facts, premising only to you that I have it in strictest injunction from my client, to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtlety that could withdraw his cause from the test of that enquiry, which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December 1792, Mr. Rowan was arrested on an information, charging him with the offence for which he is now on his trial. He was taken before an honourable personage now on that bench, and admitted to bail.

He remained a considerable time in this city, soliciting the threatened prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand jury. I do not mean by this to say that informations *ex-officio* are always oppressive or unjust; but I cannot but observe to you, that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the king's prosecutor, that the accusation labours under a weakness of probability which it is difficult to assist. If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to

come forward in the ungracious form of an *ex-officio* information.*

If such bill had been set up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of his prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to waive it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must have followed. That information, therefore, was withdrawn, and a new one filed, that is in fact a third prosecution was instituted upon the same charges. This last was filed on the 8th day of last July. Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your inquiry must be, whether Mr. Rowan is pursued as a criminal or hunted down as a victim. It is not, therefore, by insinuation or circuitry, but it is boldly and directly that I assert that oppression has been intended and practised upon him, and by those facts which I have stated I am warranted in the assertion.

His demand, his intreaty to be tried was refused, and why? A hue and cry was to be raised against him; the sword was to be suspended over his head—some time was necessary for the public mind to become heated by the circulation of artful clamours of anarchy and rebellion; those same clamours which with more probability, but not more success, had been circulated before through England and Scotland. In this country the causes and the swiftness of their progress were as obvious, as their folly has since become to every man of the smallest observation; I have been stopped myself, with, "Good God, Sir, have you heard the news? No Sir, what? Why one French emissary was seen travelling through Connaught in a post-chaise, and scattering from the windows as he passed little doses of political poison, made up in square bits of paper—another was actually surprised in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants."

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us—but time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your consciences this question; is this a fair and honest prosecution? Is it brought forward with the single view of vindicating public justice, and promoting public good? And here let me remind you that you are not convened to try the guilt of a libel, affecting the personal character of any private man; I know no case in which a jury ought to be more severe than where personal calumny is conveyed through a vehicle, which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted, than when a subject is prosecuted for a libel on the state. The peculiarity of the British constitution, (to which in its fullest extent we have an undoubted right, however distant we may be from the actual

* See Case of Sir Wm. Williams, 13 Howell's St. Tr. p. 1369; Horne's Case, 20 Howell's St. Tr. pp. 677, 692.

enjoyment) and in which it surpasses every known government in Europe, is this ; that its only professed object is the general good, and its only foundation the general will ; hence the people have a right acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution which speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be. This is a kind of subject which I feel myself overawed when I approach ; there are certain fundamental principles which nothing but necessity should expose to public examination ; they are pillars the depth of whose foundation you cannot explore without endangering their strength ; but let it be recollected that the discussion of such topics should not be condemned in me, nor visited upon my client. The blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers ; and in order to that, the freedom of the press has been cherished by the law of England. In private defamation let it never be tolerated ; in wicked and wanton aspersion upon a good and honest administration let it never be supported, not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find in the detected falsehood of a licentious press a security and a credit, which it could never otherwise obtain. I said a good government cannot be endangered ; I say so again, for whether it be good or bad can never depend upon assertion, the question is decided by simple inspection : to try the tree look at its fruit ; to judge of the government look at the people ; what is the fruit of good government ? The virtue and happiness of the people ; do four millions of people in this country gather those fruits from that government to whose injured purity, to whose spotless virtue and violated honour, this seditious and atrocious libeller is to be immolated upon the altar of the constitution ? To you, gentlemen of that jury, who are bound by the most sacred obligation to your country and your God, to speak nothing but the truth, I put the question—do they gather those fruits ? are they orderly, industrious, religious and contented ? do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression ? or to try them by a test as unerring as any of the former, are they united ? The period has now elapsed in which considerations of this extent would have been deemed improper to a jury ; happily for these countries, the legislature for each has lately changed, or, perhaps to speak more properly, revived and restored the law respecting trials of this kind. For the space of thirty or forty years a usage had prevailed in Westminster Hall, by which the judges assumed to themselves the decision of the question, whether libel or not ; but the learned counsel for the prosecution are now obliged to admit that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the court, but you will receive it as matter of advice, not as matter of law ; and you will give it credit not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave now to state to you the charge, as it stands upon the

record:—It is that Mr. Rowan “being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland discontents, jealousies and suspicions of our Lord the King and his government, and disaffection and disloyalty to the person and government of our said Lord the King, and to raise very dangerous seditions and tumults within this kingdom of Ireland, and to draw the government of this kingdom into great scandal, infamy and disgrace, and to incite the subjects of our said Lord the King to attempt, by force and violence and with arms, to make alterations in the government, state and constitution of this kingdom, and to incite his Majesty’s said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom by an armed force;” did “maliciously and seditiously” publish the paper in question.

Gentlemen, without any observation of mine, you must see that this information contains a direct charge upon Mr. Rowan ; namely, that he did, with the intents set forth in the information, publish this paper ; so that here you have in fact two or three questions for your decision : first, the matter of fact of the publication : namely, did Mr. Rowan publish that paper ? If Mr. Rowan did not in fact publish that paper, you have no longer any question on which to employ your minds. If you think that he was in fact the publisher, then and not till then arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this, is the paper a libel ? and did he publish it with the intent charged in the information ? But whatever you may think of the abstract question ; whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, there can be no ground for a verdict against him, unless you also are persuaded that what he did was done with a criminal design. I wish, gentlemen, to simplify and not to perplex ; I therefore say again, if these three circumstances conspire, that he published it, that it was a libel, and that it was published with the purposes alledged in the information, you ought unquestionably to find him guilty ; if on the other hand, you do not find that all these circumstances concurred ; if you cannot upon your oaths say that he published it ; if it be not in your opinion a libel, and if he did not publish it with the intention alledged : I say upon the failure of any one of these points, my client is intitled, in justice, and upon your oaths, to a verdict of acquittal.

Gentlemen, Mr. Attorney-General has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction ; let me also make a few retrospective observations on a period, at which he has but slightly glanced ; I speak of the events which took place before the close of the American war. You know gentlemen that France had espoused the cause of America, and we became thereby engaged in a war with that nation. *Heu nescia mens hominum futuri ?* Little did that ill-fated monarch know that he was forming the first causes of those disastrous events, that were to end in the subversion of the throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember

that at a time, when we had scarcely a regular soldier for our defence; when the old and young were alarmed and terrified with the apprehension of descent upon our coasts; that Providence seemed to have worked a sort of miracle in our favour. You saw a band of armed men come forth at the great call of nature, of honour, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude, which then beat in the public bosom: to recollect amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and reliance, of danger and protection; imploring the blessings of Heaven upon their heads, and its conquest upon their swords. The illustrious and adored, and *abused* body of men stood forward and assumed the title, which, I trust, the ingratitude of their country will never blot from its history, "THE VOLUNTEERS OF IRELAND."

Give me leave now, with great respect, to put one question to you: Do you think the assembling of that glorious band of patriots was an insurrection? do you think the invitation to that assembling would have been sedition? They come under no commission but the call of their country; unauthorised and unsanctioned except by public emergency and public danger. I ask was that meeting insurrection or not? I put another question: If any man then had published a call on that body, and stated that war was declared against the state; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching when the unprotected feebleness of age and sex—when the sanctity of habitation would be disregarded and prophaned by the brutal ferocity of a rude invader; if any man had then said to them "leave your industry for a while, that you may return to it again, and come forth in arms for the public defence"—I put the question boldly to you gentlemen—it is not the case of the Volunteers of that day; it is the case of my client, at this hour, which I put to you—would that call have then been pronounced in a court of justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now—what is the force and perfection of the law? It is the permanency of the law; it is that whenever the fact is the same, the law is also the same; it is that the law remains a written, monumented and recorded letter to pronounce the same decision, upon the same facts whenever they shall arise. I will not affect to conceal it: you know there has been an artful, ungrateful, and blasphemous clamour raised against these illustrious characters, the saviours of the kingdom of Ireland.

Having mentioned this, let me read a few words of the paper alleged to be criminal: "You first took up arms to protect your country from foreign enemies and from domestic disturbance. For the same purposes it now becomes necessary that you should resume them." I should be the last in the world to impute any want of candour to the right honourable gentleman, who has stated the case on behalf of

the prosecution : but he has certainly fallen into a mistake, which, if not explained, might be highly injurious to my client. He supposed that this publication was not addressed to those ancient Volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it. The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body of men, as has been called a banditti, with what justice it is unnecessary to inquire, and not to the old Volunteers? As the sneer at the words Citizen Soldiers, I should feel that I was treating a very respected friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation. I may, however, be permitted to observe, that those who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British constitution, "that no man in becoming a soldier ceases to be a citizen." Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue; and would to God, for the sake of humanity, that they had preserved even the little they did borrow. If even there could be an objection to that appellation, it must have been strongest when it was first assumed.* To that period the writer manifestly alludes; he addresses "those who first took up arms:" you first took up arms to protect your country from foreign enemies and from domestic disturbance, For the same purposes it now becomes necessary that you should resume them. Is this applicable to those who had never taken up arms before? "A proclamation," says this paper, "has been issued in England for embodying the militia, and a proclamation has been issued by the Lord Lieutenant, and council in Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home." God help us, from the situation of Europe at that time, we were threatened with too probable danger from abroad, and I am afraid it was not without foundation we were told of our having something to dread at home. I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alleged to be a libel. To that my answer for my client is short; I do conceive it competent to a British subject—if he thinks that a proclamation has issued for the purpose of raising false terrors, I hold it to be not only the privilege, but the duty of a citizen, to set his countrymen right, with respect to such misrepresented danger; and until a proclamation, in this country, shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther, if an actual law had passed receiving the sanction of the three estates, if it be exceptionable in any matter, it

* Whoever will take the trouble of reading the resolutions and addresses of the old Volunteers, at and prior to 1783, will find the terms Citizen Soldiers, and Citizen Soldiery, to have been no uncommon appellations to that body.

is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know, if the positive laws of Great Britain are thus questionable, upon what ground the proclamation of an Irish government should not be open to the animadversion of Irish subjects.

"Whatever be the motive, or from whatever quarter it arises," says this paper, "alarm has arisen." Gentlemen, do you not know that to be the fact? It has been stated by the Attorney-General, and most truly, that the most gloomy apprehensions were entertained by the whole country. "You Volunteers of Ireland are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." I am free to confess if any man assuming the liberty of a British subject, to question public topics, should under the mask of that privilege publish a proclamation inviting the profligate and seditious, those in want and those in despair to rise up in arms to overawe the legislature, to rob us of whatever portion of the blessings of a free government we possess; I know of no offence involving greater enormity. But that, gentlemen, is the question you are to try. If my client acted with an honest mind and fair intention, and having, as he believed, the authority of government to support him in the idea that danger was to be apprehended, did apply to that body of so known and so revered character, calling upon them by their former honour, the principle of their glorious institution, and the great stake they possessed in their country. If he interposed not upon a fictitious pretext, but a real belief of actual and imminent danger, and that their arming at that critical moment was necessary to the safety of their country; his intention was not only innocent, but highly meritorious. It is a question, gentlemen, upon which you only can decide; it is for you to say whether it was criminal in the defendant to be so misled, and whether he is to fall a sacrifice to the prosecution of that government by which he was so deceived. I say again, gentlemen, you can look only to his own words as the interpreter of his meaning; and to the state and circumstances of his country, as he was made to believe them, as the clue to his intention. The case then, gentlemen, is shortly and simply this; a man of the first family and fortune, and character and property among you, reads a proclamation stating the country to be in danger from abroad and at home, and thus alarmed—thus upon authority of the prosecutor, alarmed, applies to that august body, before whose awful presence sedition must vanish, and insurrection disappear. You must surrender, I hesitate not to say it, your oaths to unfounded assertion, if you can submit to say that such an act, of such a man, so warranted, is a wicked and seditious libel. If he was a dupe, let me ask you, who was the imposter? I blush and I shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of that imposter.

You perceive, gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication, in point of fact, is to be ascribed to Mr. Rowan or not. I have been unintentionally led

into this violation of order. I should effect no purpose of either brevity or clearness, by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of the topic I am upon, namely, the merit of the publication in question.

This publication, if ascribable at all to Mr. Rowan, contains four distinct subjects; the first the invitation to the Volunteers to arm; upon that I have already observed; but those that remain are surely of much importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in parliament; it states, thirdly, the necessity of an emancipation of the Catholic inhabitants of Ireland; and as necessary to the achievement of all these objects, does, fourthly, state the necessity of a general delegated convention of the people.

It has been alledged that Mr. Rowan intended by his publication to excite the subjects of this country to effect an alteration in the form of your constitution. And here, gentlemen, perhaps, you may not be unwilling to follow a little farther than Mr. Attorney-General has done, the idea of a late prosecution in Great Britain upon the subject of a public libel. It is with peculiar fondness I look to that country for solid principles of constitutional liberty and judicial example. You have been pressed in no small degree with the manner in which this publication marks the different orders of our constitution, and comments upon them. Let me shew you what boldness of animadversion on such topics is thought justifiable in the British nation, and by a British jury. I have in my hand the report of the trial of the printers of the *Morning Chronicle*, for a supposed libel against the state, and of their acquittal; let me read to you some passages from that publication, which a jury of Englishmen were in vain called upon to brand with the name of a libel.

“Claiming it as our indefeasible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join us in this manly and benevolent pursuit; the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied, except by those who are the slaves of prejudice, or the interested in the continuation of abuses. As men who wish to aspire to the title of freemen, we totally deny the wisdom and the humanity of the advice, to approach the defects of government with “pious awe and trembling solicitude.” What better doctrine could the pope or the tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will not bear such a scrutiny, must be systematically or practically bad. We are sensible that those who are not friends to the general good, have attempted to inflame the public mind with the cry of “Danger,” whenever men have associated for discussing the principles of government, and we have little doubt but such conduct will be pursued in this place; we would therefore caution every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamours of those who live

on the sources of corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal."——

——“We view with concern the frequency of wars.—We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expense of their labour and blood; and we must say, in the language of a celebrated author—“We, who are only the people, but who pay for wars with our substance and our blood, will not cease to tell kings,” or governments, “that to them alone wars are profitable; that the true and just conquests are those which each makes at home, by comforting the peasantry, by promoting agriculture and manufactories; by multiplying men, and the other productions of nature, then it is that kings may call themselves the image of God, whose will is perpetually directed to the creation of new beings. If they continue to make us fight and kill one another, in uniform, we will continue to write and speak, until nations shall be cured of this folly.”—We are certain our present heavy burthens are owing, in a great measure to cruel and impolitic wars, and therefore we will do all on our part, as peaceable citizens who have the good of the community at heart, to enlighten each other, and protest against them.

“The present state of the representation of the people, calls for the particular attention of every man who has humanity sufficient to feel for the honour and happiness of his country; to the defects and corruptions of which we are inclined to attribute unnecessary wars, &c. &c. We think it a deplorable case when the poor must support a corruption which is calculated to oppress them; when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower classes may say—“We give you our money, for which we have toiled and sweat, and which would save our families from cold and hunger; but we think it more hard that there is nobody whom we have delegated, to see that it is not improperly and wickedly spent; we have none to watch over our interests; the rich only are represented.”——

——“An equal and uncorrupt representation would, we are persuaded, save us from heavy expences, and deliver us from many oppressions, we will therefore do our duty to procure this reform, which appears to us of the utmost importance.”

“In short we see with the most lively concern, an army of placemen, pensioners, &c., fighting in the cause of corruption and prejudice, and spreading the contagion far and wide.”——

——“We see with equal sensibility the present outcry against reforms, and a proclamation (tending to cramp the liberty of the press, and discredit the true friends of the people) receiving the support of numbers of our countrymen.”——

——“We see burdens multiplied—the lower classes sinking into poverty, disgrace, and excesses, and the means of these shocking abuses increased for the purposes of revenue.”——

——“We ask ourselves—“Are we in England?”—Have our forefathers fought, bled, and conquered for liberty? And did they not think that the fruits of their patriotism would be more abundant in peace, plenty, and happiness?”——

—"Is the condition of the poor never to be improved? Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present association; an union founded on principles of benevolence and humanity; disclaiming all connection with riots and disorder, but firm in our purpose, and warm in our affections for liberty.

"Lastly—We invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness, till the people be too wise to be imposed upon; and their influence in the government be commensurate with their dignity and importance.

"Then shall we be free and happy."

Such, gentlemen, is the language, which a subject of Great Britain thinks himself warranted to hold, and upon such language has the corroborating sanction of a British jury been stamped by a verdict of acquittal. Such was the honest and manly freedom of publication, in a country too where the complaint of abuses has not half the foundation it has here. I said I loved to look to England for principles of judicial example, I cannot but say to you that it depends on your spirit whether I shall look to it hereafter with sympathy or with shame. Be pleased now, gentlemen, to consider whether the statement of the imperfection in your representation, has been made with a desire of inflaming an attack upon the public tranquillity, or with an honest purpose of procuring a remedy for an actually existing grievance.

It is impossible not to revert to the situation of the times, and let me remind you that whatever observations of this kind I am compelled thus to make in a court of justice, the uttering of them in this place is not imputable to my client, but the necessity of defence imposed upon him by this extraordinary prosecution.

Gentlemen, the representation of your people is the vital principle of their political existence, without it they are dead, or they live only to servitude; without it there are two estates acting upon and against the third, instead of acting in co-operation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? Without it, if they are trampled upon and plundered by a minister, where is the tribunal to which the offender shall be amenable? Without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed band of imps and minions that bask in their disgrace, and fatten upon their spoils, and flourish upon their ruin? But let me not put this to you as a merely speculative question. It is a plain question of fact; rely upon it, physical man is every where the same, it is only the various operation of moral causes that gives variety to the social or individual character and condition. How happens it that modern slavery looks quietly at the despot, on the very spot where Leonidas expired? The answer is easy, Sparta has not changed her climate, but she has lost that government which her liberty could not survive.

I call you, therefore, to the plain question of fact; this paper recommends a reform in parliament; I put that question to your consciences, do you think it needs that reform? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be? Do you hesitate for an answer? If you do, let me remind you that until the last year three millions of your countrymen have by the express letter of the law been excluded from the reality of actual, and even from the phantom of virtual representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary? If you do not feel the mockery of such a charge, look at your country, in what state do you find it? Is it in a state of tranquillity and general satisfaction? These are traces by which good is ever to be distinguished from bad government. Without any very minute enquiry or speculative refinement; do you feel that a veneration for the law, a pious and humble attachment to the constitution, form the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where a government is mild and moderate; where taxes are imposed by a body who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing sore upon them?

Gentlemen, I mean not to impeach the state of your representation, I am not saying that it is defective, or that it ought to be altered or amended, nor is this a place for me to say, whether I think that three millions of the inhabitants of a country whose whole number is but four, ought to be admitted into any efficient situation in the state; it may be said, and truly, these are not questions for either of us directly to decide; but you cannot refuse them some passing consideration at least, when you remember that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding; whether it cannot be mistake; whether it can be only sedition.

And here, gentlemen, I own I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of a reform, at the moment when that necessity seems admitted by the parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion, and criminal prosecution; far am I from imputing any sinister design to the virtue or wisdom of our government, but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information?

I am the more forcibly impressed by this concern, when I consider that when this information was first put upon the file, the subject was transiently mentioned in the House of Commons. Some circumstances retarded the progress of the inquiry there; and the progress of the information was equally retarded here. The first day of this session you all know, that subject was again brought forward in the House of Commons, and as if they had slept together, this prosecution was also revived in the Court of King's Bench; and that before a jury, taken from a pannel partly composed of those very members of par-

liament, who, in the House of Commons, must debate upon this subject as a measure of public advantage, which they might have here to consider as a public crime.*

This paper, gentlemen, insists upon the necessity of emancipating the Catholics of Ireland, and that is charged as part of the libel. If they had waited another year, if they had kept this prosecution impending another year, how much would remain for a jury to decide upon, I should be at a loss to discover. It seems as if the progress of public reformation was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our Catholic brethren have obtained that admission, which it seems it was a libel to propose: in what way to account for this, I am really at a loss. Have any alarms been occasioned by the emancipation of our Catholic brethren? Has the bigotted malignity of any individuals been crushed? Or has the stability of the government, or has that of the country been weakened? Or is one million of subjects stronger than four millions? Do you think that the benefit they received should be poisoned by the sting of vengeance? If you think so, you must say to them, "you have demanded emancipation and you have got it; but we abhor your persons, we are outraged at your success; and we will stigmatise by a criminal prosecution the relief which you have obtained from the voice of your country." I ask you, gentlemen, do you think as honest men, anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that you ought to speak this language at this time, to men who are too much disposed to think that in this very emancipation they have been saved from their own parliament by the humanity of their sovereign? Or do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane at this moment to insult them, by sticking up in a pillory the man who dared to stand forth their advocate? I put it to your oaths, do you think, that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure? To propose the redeeming of religion from the abuses of the church, the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to demand it; giving, I say, in the so much censured words of this paper, giving "UNIVERSAL EMANCIPATION!" I speak in the spirit of the British law, which makes liberty commensurate with and inseparable from British soil; which proclaims even to the stranger and the sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the Genius of UNIVERSAL EMANCIPATION. No matter in what language his doom may have been pronounced—no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him—no matter in what disastrous battle his liberty may have been cloven down—no matter with what solemnities

* Among the names on the pannel were Right Hon. J. Cuffe, M.P.—Right Hon. D. Latouche, M.P.—Sir W. G. Newcomen, Bart. M.P.—J. Maxwell, M.P.—C. H. Coote, M.P.—Henry Bruen, M.P.—H. V. Brooke, M.P.—J. Reilly, M.P.—J. Pomeroy, M.P.

he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains, that burst from around him, and he stands redeemed, regenerated, and disenthralled, by the irresistible Genius of UNIVERSAL EMANCIPATION.

[Here Mr. Curran was interrupted by a sudden burst of applause from the court and hall, silence however was restored after some minutes, by the interposition of Lord Clonmel, who declared the great pleasure he felt himself, at the exertion of professional talents, but disapproved any intemperate expression of applause in a court of justice.]

Mr. CURRAN then proceeded—Gentlemen, I am not such a fool, as to ascribe any effusion of this sort to any merit of mine. It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer! What you hear is but the testimony which nature bears to her own character; it is the effusion of her gratitude to that power, which stamp that character upon her.

And, gentlemen, permit me to say, that if my client had occasion to defend his cause by any mad or drunken appeals to extravagance or licentiousness, I trust in God I stand in that situation, that humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connexion of principle or party, or even private friendship, and saying this I cannot but add, that I consider not to be acquainted with such a man as Mr. Rowan, a want of personal good fortune.

Gentlemen, upon this great subject of reform and emancipation, there is a latitude and boldness of remark, justifiable in the people, and necessary to the defence of Mr. Rowan, for which the habits of professional studies, and technical adherence to established forms, have rendered me unfit. It is however my duty, standing here as his advocate, to make some few observations to you, which I conceive to be material.

Gentlemen, you are sitting in a country, which has a right to the British constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject; if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make; in the present unhappy state of Europe, if you had been heretofore a stranger to Great Britain, you would now say, we will enter into society and union with you;

Una salus ambobus erit, commune periculum;

But to accomplish that union let me tell you, you must learn to become like the English people; it is vain to say, you will protect their freedom if you abandon your own. The pillar whose base has no foundation, can give no support to the dome under which its head is placed, and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity. Let us follow this a little further, I know you will interpret what I say with the candour in which it is spoken. England is marked by a natural avarice of freedom, which

she is studious to engross and accumulate, but most unwilling to impart, whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say, but that so is the fact, you need not look to the East, or to the West, you need only look to yourselves.

In order to confirm that observation, I would appeal to what fell from the learned counsel for the crown, that notwithstanding the alliance subsisting for two centuries past, between the two countries, the date of liberty in one goes no further back than the year 1784.

If it required additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connexions more as colonies, than as allies; and it must be owing to the great spirit indeed of Ireland if she shall continue free. Rely upon it she will ever have to hold her course against an adverse current; rely upon it if the popular spring does not continue strong and elastic, rely upon it, a short interval of debilitated nerve and broken force will send you down the stream again, and reconsign you to the condition of a province.

If such should become the fate of your constitution, ask yourselves what must be the motive of your government? It is easier to govern a province by a faction, than to govern a co-ordinate country by co-ordinate means. I do not say it is now, but it will be always thought easiest by the managers of the day, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connection with Great Britain be preserved only by her own degradation. In such a precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty, and British connexion, will see, that the only means of saving both must be, as Lord Chatham expressed it, the infusion of new health and blood into the constitution. He will see how deep a stake each country has in the liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a co-ordinate, and co-interested ally, instead of an oppressed, enfeebled and suspected dependant; he will see how grossly the credulity of Britain is abused by those, who make her believe that her solid interest is promoted by our depression; he will see the desperate precipice to which she approaches by such a conduct, and with an animated and generous piety he will labour to avert her danger. But, gentlemen of the jury, what is likely to be his fate? The interest of the sovereign must be for ever the interest of the people, because his interest lives beyond his life, it must live in his fame, it must live in the tenderness of his solicitude for an unborn posterity; it must live in that heart-attaching bond by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of king and father of his people.

But what can be the interest of such a government as I have described? Not the interest of the king, not the interest of the people, but the sordid interest of the hour; the interest in deceiving the one, and in oppressing and deforming the other: the interest of unpunished rapine and unmerited favour: that odious and abject

interest, that prompts them to extinguish public spirit in punishment or in bribe; and to pursue every man, even to death, who has sense to see, and integrity and firmness enough to abhor and to oppose them. What therefore I say, gentlemen, will be the state of the man, who embarks in an enterprise of so much difficulty and danger? I will not answer it. Upon that hazard has my client put everything that can be dear to man;—his fame, his fortune, his person, his liberty and his children; but with what event your verdict only can answer, and to that I refer your country.

Gentlemen, there is a fourth point remaining. Says this paper, "For both these purposes, it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization, is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness; the union of affection and exertion will dissolve, and too probably some local insurrection, instigated by the malignity of our common enemy, may commit the character and risque the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation, unless the sense of the Protestant people be on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into mass, we may perhaps serve some person or some party for a little, but the public not at all; the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves."

Gentlemen, it is with something more than common reverence, it is with a species of terror that I am obliged to tread this ground. But what is the idea put in the strongest point of view. We are willing not to manifest our powers, but to supplicate administration, to anticipate revolution, that the legislature may save the country in mercy to itself.

Let me suggest to you, gentlemen, that there are some circumstances which have happened in the history of this country, that may better serve as a comment upon this part of the case than any I can make. I am not bound to defend Mr. Rowan as to the truth or wisdom of the opinions he may have formed. But if he did really conceive the situation of the country such as that the not redressing her grievances might lead to a convulsion, and of such an opinion not even Mr. Rowan is answerable here for the wisdom, much less shall I insinuate any idea of my own upon so awful a subject, but if he did so conceive the fact to be, and acted from the fair and honest suggestion of a mind anxious for the public good, I must confess, gentlemen, I do not know in what part of the British constitution to find the principle of his criminality.

But, gentlemen, be pleased further to consider, that he cannot be understood to put the fact on which he argues on the authority of his assertion. The condition of Ireland was open to the observation of every other man as to that of Mr. Rowan; what then does this part of the publication amount to? In my mind simply to this: "the nature of oppression in all countries is such, that although it may be borne to a certain degree, it cannot be borne beyond that degree; you find it exemplified in Great Britain; you find the people of England patient to a certain point, but patient no longer. That infatuated monarch, James II., experienced this; the time did come, when the measure of popular suffering and popular patience was full; when a single drop was sufficient to make the waters of bitterness to overflow. I think this measure in Ireland is brimful at present; I think the state of misrepresentation of the people in parliament is a grievance, I think the utter exclusion of three millions of people is a grievance of that kind that the people are not likely long to endure, and the continuation of which may plunge the country into that state of despair which wrongs exasperated by perseverance never fail to produce." But to whom is even this language addressed? Not to the body of the people, on whose temper and moderation if once excited, perhaps not much confidence could be placed; but to that authoritative body whose influence and power would have restrained the excesses of the irritable and tumultuous; and for that purpose expressly does this publication address the Volunteers. "We are told that we are in danger;—I call upon you, the great constitutional saviours of Ireland, defend the country to which you have given political existence, and use whatever sanction your great name, your sacred character, and the weight you have in the community, must give you to repress wicked designs, if any there are.

"We feel ourselves strong, the people are always strong, the public chains can only be rivetted by the public hands; look to those devoted regions of Southern despotism, behold the expiring victim on his knees, presenting the javelin reeking with his blood to the ferocious monster who returns it into his heart. Call not that monster the tyrant, he is no more than the executioner of that inhuman tyranny which the people practice upon themselves, and of which he is only reserved to be a later victim than the wretch he has sent before. Look to a nearer country, where the sanguinary characters are more legible; whence you almost hear the groans of death and torture. Do you ascribe the rapine and murder of France to the few names that we are execrating here? or do you not see that it is the phrenzy of an infuriated multitude abusing its own strength, and practising those hideous abominations upon itself. Against the violence of this strength let your virtue and influence be our safeguard." What criminality, gentlemen of the jury, can you find in this? what at any time? But I ask you, peculiarly at this momentous period, what guilt can you find in it? My client saw the scene of horror and blood which covers almost the face of Europe: he feared that causes, which he thought similar, might produce similar effects, and he seeks to avert those dangers by calling the united virtue and tried moderation of the country into a state of strength and vigilance. Yet this is the conduct which the prosecution of this day seeks to punish

and stigmatize. And this is the language for which this paper is reprobated to-day, as tending to turn the hearts of the people against their sovereign, and inviting them to overturn the constitution. Let us now, gentlemen, consider the concluding part of this publication; it recommends a meeting of the people to deliberate on constitutional methods of redressing grievances. Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded, perhaps, in law; but I did imagine that when the bill of rights restored the right of petitioning for the redress of grievances, it was understood the people might boldly state among themselves that grievances did exist; that they might lawfully assemble themselves in such manner as they might deem orderly and decorous. I thought I had collected it from the greatest luminaries of the law. The power of petitioning seemed to me to imply the right of assembling for the purpose of deliberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided, in doing so, they did not commit any breach or violation of the public peace. I know that there has been a law passed in the Irish parliament of last year, which may bring my former opinion into a merited want of authority. That law declares that no body of men may delegate a power to any smaller number, to act, think, or to petition for them. If that law had not passed I should have thought that the assembling by a delegated convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people. I should have conceived before that act that any law to abridge the orderly appointment of the few to consult for the interest of the many, and thus force the many to consult by themselves or not at all, would in fact be a law not to restrain but to promote insurrection, but that law has spoken and my error must stand corrected. Of this, however, let me remind you, you are to try this part of the publication by what the law was then, and by what it is now. How was it understood until last session of parliament? You had both in England and Ireland, for the last ten years, these delegated meetings. The Volunteers of Ireland, in 1782, met by delegation; they framed a plan of parliamentary reform; they presented it to the representative wisdom of the nation; it was not received, but no man ever dreamed that it was not the undoubted right of the subject to assemble in that manner. They assembled by delegation at Dungannon, and to shew the idea then entertained of the legality of their public conduct, that same body of Volunteers was thanked by both houses of parliament, and their delegates most graciously received at the throne. The other day, you had delegated representatives of the Catholics of Ireland, publicly elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government, and under the eye of your own parliament, which was then assembled; you have seen the delegates from that convention, carry the complaints of their grievances to the foot of the throne; from whence they brought back to that convention, the auspicious tidings of that redress which they had been refused at home.

Such, gentlemen, have been the means of popular communication

and discussion, which until the last session have been deemed legal in this country ; as happily for the sister kingdom, they are yet considered there.

I do not complain of this act as any infraction of popular liberty ; I should not think it becoming in me to express any complaint against a law, when once become such. I observe only, that one mode of popular deliberation is thereby taken utterly away, and you are reduced to a situation in which you never stood before. You are living in a country, where the constitution is rightly stated to be only ten years old ; where the people have not the ordinary rudiments of education. It is a melancholy story, that the lower orders of the people here have less means of being enlightened than the same class of people in any other country. If there be no means left by which public measures can be canvassed, what will be the consequence ? Where the press is free, and discussion unrestrained, the mind by the collision of intercourse, gets rid of its own asperities, a sort of insensible perspiration takes place, by which those acrimonies, which would otherwise fester and inflame, are quietly dissolved and dissipated. But now, if any aggregate assembly shall meet, they are censured ; if a printer publishes their resolutions he is punished ; rightly to be sure in both cases, for it has been lately done. If the people say, let us not create tumult, but meet in delegation, they cannot do it ; if they are anxious to promote parliamentary reform, in that way, they cannot do it ; the law of the last session has for the first time declared such meetings to be a crime. What then remains ? Only the liberty of the press, that sacred palladium, which no influence, no power, no minister, no government, which nothing but the depravity, or folly, or corruption of a jury, can ever destroy. And what calamity are the people saved from, by having public communication left open to them ? I will tell you, gentlemen, what they are saved from, and what the government is saved from ; I will tell you also, to what both are exposed by shutting up that communication ; in one case sedition speaks aloud, and walks abroad ; the demagogue goes forth, the public eye is upon him, he frets his busy hour upon the stage, but soon either weariness, or bribe, or punishment, or disappointment bears him down, or drives him off, and he appears no more ; in the other case, how does the work of sedition go forward ? Night after night the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion even of individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints, even the person of the despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprise upon both ; the decisive instant is precipitated without warning, by folly on the one side or by frenzy on the other, and there is no notice of the treason till the traitor acts. In those unfortunate countries (one cannot read it without horror) there are officers whose province it is, to have the water, which is to be drank by their rulers, sealed up in

bottles, lest some wretched miscreant should throw poison into the draught.

But, gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own revolution ; you have it at that memorable period, when the monarch found a servile acquiescence in the ministers of his folly, when the liberty of the press was trodden under foot, when venal sheriffs returned packed juries to carry into effect those fatal conspiracies of the few against the many ; when the devoted benches of public justice were filled by some of those foundlings of fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies, while soundness or sanity remained in them ; but at length becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion and abomination.

In that awful moment of a nation's travail, of the last gasp of tyranny, and the first breath of freedom, how pregnant is the example ? The press extinguished, the people enslaved, and the prince undone.

As the advocate of society, therefore, of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great centinel of the state, that grand detector of public imposture : guard it, because when it sinks, there sinks with it, in one common grave, the liberty of the subject and the security of the crown.

Gentlemen, I am glad that this question has not been brought forward earlier ; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain analagous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles ; at that moment of general paroxysm, to accuse was to convict. The danger looked larger to the public eye, from the misty medium through which it was surveyed. We measure inaccessible heights by the shadows which they project ; where the lowness and the distance of the light form the length of the shade.

There is a sort of spring, and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, gentlemen, can you ascribe that in the wise, the reflecting and the philosophic nation of Great Britain, a printer has been gravely found guilty of a libel, for publishing those resolutions, to which the present minister of that kingdom had actually subscribed his name ? To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland, a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth ; cool and ardent, adventurous and persevering ; winning her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires ; crowned as she is with the spoils of every art, and decked with the wreath of every muse ; from the deep and scrutinizing researches of her Hume, to the sweet and simple, but not less sublime

and pathetic morality of her Burns—how from the bosom of a country like that, genius and character, and talents, should be banished to a distant barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy, for twice the period that ordinary calculation gives to human life? But I will not further press any idea that is painful to me, and I am sure must be painful to you: I will only say, you have now an example, of which neither England nor Scotland had the advantage; you have the example of the panic, the infatuation and the contrition of both. It is now for you to decide whether you will profit by their experience of idle panic and idle regret, or whether you meanly prefer to palliate a servile imitation of their frailty, by a paltry affectation of their repentance. It is now for you to shew that you are not carried away by the same hectic delusions, to acts, of which no tears can wash away the fatal consequences, or the indelible reproach.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured; let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney General has cited himself, I mean that of the trial of Lambert in England, is there a topic of invective against constituted authorities; is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted, and acquitted by an English jury? See too what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade. And saying this let me not be misunderstood; it is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist; yet I cannot but say, that the movers of this prosecution have forced that question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any informer ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney General, that nothing can be more criminal than an attempt to work a change in the Government by armed force; and I entreat that the court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe or to overturn the Government; but I put my client's case upon another ground—if he was led into an opinion of grievances where there were none, if he thought there ought to be a reform where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God before whom the accuser, the accused, and the judge must appear together, that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen, Mr. Attorney General has said, that Mr. Rowan did by this publication (supposing it to be his) recommend, under the

name of equality, a general indiscriminate assumption of public rule by every the meanest person in the state. Low as we are in point of public information, there is not, I believe, any man, who thinks for a moment, that does not know, that all which the great body of people, of any country, can have from any government, is a fair encouragement for their industry, and protection for the fruits of their labour. And there is scarcely any man, I believe, who does not know, that if a people could become so silly as to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption? I will read the words which relate to that subject,—“By liberty we never understood unlimited freedom, nor by equality the levelling of property or the destruction of subordination.” I ask you with what justice, upon what principle of common sense, you can charge a man for the publication of sentiments, the very reverse of what his words avow? And that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? Or if you do adopt an arbitrary principle of imputing to him *your* meaning instead of his own, what publication can be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced into a court acting on the principles of the British constitution.

In the bitterness of reproach it was said, ‘out of thine own mouth will I condemn thee;’ from the severity of justice I demand no more. See if in the words that have been spoken, you can find matter to acquit, or to condemn. “By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination. This is a calumny invented by the faction or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland.” Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

I say therefore, gentlemen of the jury, as to the four parts into which the publication must be divided, I answer thus: it calls upon the Volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist, the high character, the known moderation, the approved loyalty of that venerable institution, the similarity of the circumstances between the period at which they were summoned to take arms, and that in which they have been called upon to reassume them. Upon this simple ground, gentlemen, you will decide, whether this part of the publication was libellous and criminal or not.

As to reform, I could wish to have said nothing upon it, I believe I have said enough; if he thought the state required it, he acted like an honest man; for the rectitude of the opinion he was not answerable, he discharged his duty in telling the country he thought so.

As to the emancipation of the Catholics, I cannot but say that Mr. Attorney General did very wisely in keeping clear of that. Yet, gentlemen, I need not tell you how important a figure it was intended to make upon the scene, though from unlucky accidents, it has become necessary to expunge it during the rehearsal.

Of the concluding part of this publication, the convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected. It is, however, with pleasure I feel I am drawing to a close, and that only one question remains, to which I would beg your attention.

Whatever, gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you to decide upon: namely, whether, in point of fact, this publication be imputable to Mr. Rowan or not? Whether he did publish it or not? And two witnesses are called to that fact, one of the name of Lyster, and the other of the name of Morton. You must have observed that Morton gave no evidence upon which that paper could have even been read; he produced no paper, he identified no paper, he said that he got some paper, but that he had given it away. So that, in point of law, there was no evidence given by him, on which it could have gone to a jury, and, therefore, it turns entirely upon the evidence of the other witness. He has stated that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you. I know you are well acquainted with the fact, that the credit of every witness must be considered by, and rest with the jury. They are the sovereign judges of that, and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character of your fellow citizens. Under what circumstances does this evidence come before you? The witness says he has got a commission in the army by the interest of a lady, from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers, to make an endorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence upon the subject; he "took it with no such view." There is something whimsical in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I know not, I know not the man; but his credit is impeached. Mr. Blake was called, he said he knew him. I asked him—"do you think, Sir, that Mr. Lyster is or is not a man deserving credit upon his oath?" If you find a verdict of conviction, it can be only upon the credit of Mr. Lyster. What said Mr. Blake? Did he tell you that he believed he was a man to be believed upon his oath? He did not attempt to say that he was. The best he could say was, that he would hesitate. Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster? If you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But if you do not know him, you must take his credit from an unimpeached witness, swearing that he would hesitate to believe him. In my mind there is a circumstance of the strongest nature that came out from Lyster on the table. I am aware that a most respectable man, if impeached by surprise, may not be prepared to repel a wanton calumny by contrary testimony.

But was Lyster unapprised of this attack upon him? What said he? "I knew that you had Blake to examine against me, you have brought him here for that purpose." He knew the very witness that was to be produced against him, he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smyth, "From my knowledge of him I would not believe him upon his oath."

MR. ATTORNEY-GENERAL.—I beg pardon but I must set Mr. Curran right. Mr. Lyster said he had heard Blake would be here, but not in time to prepare himself.

MR. CURRAN.—But what said Mrs. Hatchell? Was the production of that witness a surprise upon Mr. Lyster? Her cross-examination shews the fact to be the contrary. The learned counsel, you see, was perfectly apprised of a chain of private circumstances, to which he pointed his questions. Did he know these circumstances, by inspiration? No; they could come only from Lyster himself. I insist, therefore, the gentleman knew his character was to be impeached; his counsel knew it, and not a single witness has been produced to support it; then consider, gentlemen, upon what ground you can find a verdict of conviction against my client, when the only witness produced to the fact of publication is impeached, without even an attempt to defend his character. Many hundreds, he said, were at the meeting, why not produce one of them to swear to the fact of such a meeting? One he has ventured to name, but he was certainly very safe in naming a person, who he has told you is not in the kingdom, and could not therefore be called to confront him.

Gentlemen, let me suggest another observation or two. If still you have any doubt as to the guilt or innocence of the defendant, give me leave to suggest to you what circumstances you ought to consider, in order to found your verdict: You should consider the character of the person accused, and in this your task is easy. I will venture to say, there is not a man in this nation, more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many, but still more so, by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly figure, with uncovered head, soliciting for their relief, searching the frozen heart of charity, for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own generous example. Or if you see him not there, you may trace his steps to the private abode of disease, and famine, and despair, the messenger of heaven, bearing with him food and medicine and consolation. Are these the materials, of which you suppose anarchy and public rapine to be formed? Is this the man, on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man likely to apostatize from every principle that can bind him to the state; his birth, his property, his education, his character, and his children? Let me tell you, gentlemen of the

jury, that if you agree with his prosecutors, in thinking that there ought to be a sacrifice of such a man, on such an occasion, and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame: for where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not laboured to alleviate, or whose public condition he had not laboured to improve.

I cannot, however, avoid adverting to a circumstance that distinguishes the case of Mr. Rowan, from that of a late sacrifice in a neighbouring kingdom.

The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their infatuation;—the more merciful spirit of our law deprives you of that consolation; his sufferings must remain for ever before your eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society, the man will be weighed against the charge, the witness and the sentence; and impartial justice will demand, why has an Irish jury done this deed? The moment he ceases to be regarded as a criminal, he becomes of necessity an accuser; and let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage, which guilt alone can render infamous; let me tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not, and it cannot, record the atrocity of his crime, must record the atrocity of his conviction. And upon this subject, credit me when I say, that I am still more anxious for you, than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice—which the law of England allows, but which ours refuses—collected in that box by a person, certainly no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial jury—feeling this, as I am persuaded you do, you cannot be surprised, however you may be distressed at the mournful presage, with which an anxious public is led to fear the worst from your possible determination. But I will not, for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation, I will not relinquish the confidence that this day will be the period of his sufferings; and, however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family, and the wishes of his country. But if, which heaven forbid, it hath still been unfortunately determined, that because he has not bent to power and authority, because he would not bow down before the golden calf and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration.

[After Mr. Curran had concluded, there was another universal burst of applause through the court and hall, for some minutes, which was again silenced by the interference of Lord Clonmel.]

MR. ATTORNEY-GENERAL.—My Lords, It is Mr. Prime Serjeant's duty to speak to the evidence, but as Mr. Curran has let fall some things to make an impression not merely upon those who surround us, I must be excused in stating some facts known to no human being but myself. It has been stated that this was an oppressive prosecution, and that oppression has been intended by the delay. Now, I do aver that the instructions he has received are false; that I received no instructions of the kind from government, and no government could think of prevailing with me in such a measure. I feel within myself, that no man could ask me such a thing twice in the office I hold. Let the jury consider the fact as it is, let them consider the evidence, and God forbid! they should be influenced by anything but the evidence. Mr. Curran states that oppression is practised—I am responsible to the court for my conduct here, and if I have carried on this prosecution with oppression, I am responsible to the country. Let this gentleman, if he thinks he has been oppressed, call me to punishment—let me be a disgrace in the eye of the country, and let me be driven from that profession, in which I have so long been honoured. The facts are these:—the accusation against Mr. Rowan was made in the month of December, 1792, he was arrested in January following, and brought before Mr. Justice Downes and discharged upon bail. The information was filed in Hilary Term; as soon as it was possible by the rules of the court, Mr. Rowan pleaded, and the *venire* issued, I do protest with a *bona fide* intention to try Mr. Rowan. After that, an error was found in the record, though it had been compared before; the error was this; in the record the words were “we would do” so and so; in the publication it was “would we do” so and so. As soon as that was discovered, notice was given that the trial could not come forward, and the witnesses were dismissed. In Trinity Term, application was made to issue the *venire*, and it appeared from the Recorder, that he was aware of the defects; I am above concealing anything, I admit he did offer to waive any objection to the error and go to trial directly. I asked Mr. Kemmis, “are the witnesses gone out of town?”—“They are gone to Galway.” I was therefore obliged to refuse the offer, but entered a *Noli prosequi* and filed a new information. Mr. Rowan put his plea upon the file, and in Michaelmas Term I applied for a trial. There were several trials at bar appointed, and the court refused, in consequence of the business before them, to try it in that term; and appointed it for this term. These are the facts I think it my duty to mention, and have no more to say upon the subject, but will leave the case entirely to the jury, whose verdict will not be influenced by such topics as have been thrown out.

MR. CURRAN.—Mr. Attorney, I could not know the circumstance you mention, of your witnesses being gone out of town.

MR. ATTORNEY-GENERAL.—It was impossible you should.*

* In the latter end of December, 1792, Mr. Rowan was arrested by virtue of Mr. Justice Downes's warrant, on a charge of distributing a seditious paper.—Mr. Justice Downes having assured Mr. Rowan, that the examinations, upon which the warrant was grounded, would be returned to the Clerk of the Crown, and that they would, he supposed, be in course by him laid before the next term grand jury, Mr. Rowan, instead of going to jail, in pursuance of his own opinion, followed the advice of his law friends, and gave bail for his appearance in the

Mr. PRIME SERGEANT.—Wearied and exhausted as you, my lords, and gentlemen of the jury, must be at this late hour, I yet feel it my duty to trespass a short time upon you, in a prosecution which the Attorney-General has been obliged to institute: Gentlemen, I say *obliged*, because prosecution is painful to him, as well as to those who act with him. The infliction of punishment is disagreeable to the court, but in our public duty these weaknesses must give way. There is justice due to the public; my learned friend is the advocate of justice to the public, not of persecution against the defendant. There is no man, who recollects the period at which this publication came out, too notorious and shameful to be forgotten, who must not have thought it highly proper to bring the publisher to a legal trial. To

King's Bench, to answer such charges as should be there made against him. During the succeeding Hilary Term, Mr. Rowan daily attended in the King's Bench, and on the last day of that term, finding that no examinations had been laid before the grand jury against him, he applied, by counsel, to the court, that the examinations should be forthwith returned, particularly as Mr. Attorney-General had, in the course of the term, filed two informations *ex-officio* against him, the one for the same alleged offence of distributing a seditious paper, and the other for a seditious conspiracy; whereupon, Mr. Justice Downes, who was on the bench, having asserted that he had on the first day of the term, returned the examinations to the Clerk of the Crown, and the Clerk of the Crown having said that from the multiplicity of examinations returned to him on the first day of the term, in the course of the term, and even on that day, he had not had time to look them over, the court refused to make any order. Mr. Rowan daily attended the King's Bench in the following Easter Term, until the same was nearly spent, and finding that no bills were sent up to the Grand Jury against him, he moved the court, by counsel, that the recognizance entered into by him and his bail, should be vacated, and publicly declared that if this motion was not granted, he would surrender himself in discharge of his bail. The Attorney-General consenting, the motion was granted, and the recognizance was vacated.

[It may not be improper here to state, that the above examinations having charged Mr. James Napper Tandy, with having distributed a seditious paper equally with Mr. Rowan, he likewise gave bail; but not having appeared in court pursuant to his recognizance, it was estreated, green-wax process issued against the bail, and the amount of the recognizance levied from them, though no bill of indictment, grounded on these examinations, was ever preferred against him, and though his absence was notoriously on another account.]

In the above mentioned Easter Term, a motion was made, on behalf of Mr. Rowan, to fix certain days for trial of the informations filed *ex-officio* against him, and the Attorney-General having agreed to the appointment of two days in the ensuing Trinity Term, viz. the 3d and 7th days of May, those days were accordingly appointed for the purpose. However, in the Easter vacation, the Attorney-General served a notice on Mr. Rowan, that he would not proceed to trial on those days, and would apply to the court to appoint other days, grounded on an affidavit to be filed, of which notice would be given: nothing was done upon this notice, and no affidavit was filed, or motion made thereon, and the *venire*, the process necessary for impannelling juries on the days appointed, having been, after being issued, kept by Mr. Kemmis, the crown solicitor, instead of being delivered to the sheriff, a motion was made, on behalf of Mr. Rowan, in the last Trinity Term, that the *venire* should be delivered to the proper officer, in order, that the trials might be had on the days appointed, in case the court should not grant any motion the Attorney-General might make for postponing the trials. This motion was opposed by the Attorney-General—he declared, that there was error in the information for distributing a seditious paper. Mr. Rowan offered to agree to an immediate amendment of the information, or that a fresh one should be filed and pleaded to instant, or that he would release all errors;—all these offers were severally refused. The object of the Attorney-General appeared to be to postpone the trials, and though only one of the informations was stated to be informal, yet the day appointed for the trial of the other, which was supposed to be formal,

the exertions of government, at that time, it is to be attributed that the trial by jury still subsists among us, and that he has not been before now tried at another court; that the King's Bench has not been superseded by a Revolutionary Tribunal; and that my learned friend has not, ere now, made room for the Public Accuser. The defendant must think it fortunate that he is tried according to established law, and defended by counsel of his own election, and before a jury, bound by a solemn appeal to God, to find according to the evidence given to them, notwithstanding that disgraceful situation in which it has been stated they will be held, if they presume to find a verdict of conviction. I feel no danger that this jury can be intimidated by apprehensions, or influenced by prejudice. My learned friend and I have been represented as instruments of oppression against the gentleman at the bar. I consider it as the talk of the moment, because his learned counsel little knows us, if he thinks us capable of acting so abominable a part; he could not mean it in the extent to which it reaches the common ear. I can consider it only as the splendid effusion of his talents; he was anxious to lead you, gentlemen, from that which was the true object of consideration. You have been told, the defendant was prosecuted because he published an invitation to the Volunteers, entered into the discussion of a reform and Catholic Emancipation, and endeavoured to have a national convention assembled. I will tell the jury it is not a prosecution upon any one of these grounds; but a prosecution, because these subjects were thrown before the public in a paper crammed with libellous and seditious matter, calculated to inflame. These measures, which were sought after, should be procured by the power of reason and not by an intimidation of the legislature. Little does the defendant's counsel know me, if he thinks I could prosecute a man for calling upon the Volunteers to suppress domestic tumult or resist a foreign foe; these are the subjects to which he calls your attention, totally evading the offensive matter in the publication. Gentlemen, the questions which you are to try are these: Was this matter published? Is it a libel? And was the intention criminal? Can he desire more? If it was not published, if it be not libellous and the intention was not criminal, I agree that the defendant ought to be

passed away without trial, equally with the day appointed for the trial of the one which was stated to be informal. The Attorney-General afterwards withdrew the information stated to have been informal, and filed another in the stead thereof. Many of Mr. Rowan's friends suspected, that the motive for postponing the trials was the expectation of having, under the shrievalty of Mr. Giffard, juries more favourable to government prosecutions, than they could entertain any hopes of having during the shrievalty of Mr. Hutton. In Michaelmas Term last, the Attorney-General applied to the court, that a day should be appointed for the trial of the information for distributing a seditious paper; the court would not appoint a day in that term, but appointed a day for the trial of that information in Hilary Term following, viz. the 29th January last. After Mr. Rowan had received his sentence, being desirous of having the information for a seditious conspiracy also tried and disposed of, he instructed his counsel to move for the appointment of a day for the purpose; and the counsel having mentioned to the Attorney-General such his instruction, the Attorney-General said that it was not his intention to proceed upon that information, and that he had been prevented only by a press of business from withdrawing it, but would without further delay, and accordingly the Attorney-General has since entered a *noli prosequi* as to that information.

acquitted; and if the jury acquit him after a fair and candid discussion of the case, no man will be more satisfied than I shall. But if, without such a consideration, a jury, in times of distraction and disorder should, acquit the factious, I agree with the gentleman, that the world would bear hard upon a jury, who from fear or favour betrayed that situation in which the law and the constitution placed them.

Let me now, gentlemen, take that place which it is my duty to take, and which the gentleman on the other side, I suppose from address, so lightly touched upon. I shall reverse the order he adopted. The first question then is, "Whether the publication of this libel was by the defendant?" If there be a man, entertaining a doubt after the evidence stated, it is in vain for me to address him. In support of the fact of publication Mr. Lyster has been examined; he states that, upon the day of the publication of the paper, he was passing through Cope-street, in this city, and seeing a great crowd at the house of Mr. Pardon, he went there to know what the object of the meeting was; he says, that on going to the door he saw Mr. Rowan, who prevented him from going to that part where the assembly was, saying he could not be let in with coloured clothes: afterwards he went up to the gallery: a bundle of papers was brought, some were thrown upon the table, and some handed up to the gallery, and this particular paper which he produced was thrown from a parcel which Mr. Hamilton Rowan had in his hand. The witness got this paper, which was thus for the first time put into circulation: he gave an account of the manner in which this matter was communicated to the Crown Solicitor. The witness was questioned much as to family matters, with a view to impeach his character, but it has had a contrary effect, for the matter was submitted to reference, and the authenticity of the instrument under which his brother claimed, has been established, and some hundreds awarded, one shilling of which would not have been given if they believed the instrument to be forged. When he was interrogated as to these matters, he said he heard, this day, that Mr. Blake was to be examined to impeach his character, "If I knew it before, said he, I could have had witnesses from the country to support me." But when Mr. Blake was called, did he in any respect whatever impeach the character of Mr. Lyster? he would not say that Mr. Lyster was not to be believed. What then must you think, when resort has been had to distant counties to find witnesses to impeach the character of Mr. Lyster, and out of the 150 men assembled in Cope-street, no one has been brought forward to deny the fact which has been sworn to? Will the jury believe that if the fact could be controverted, men would not come forward with emulation to acquit Mr. Rowan? I there join with his counsel: he is far above bringing any man forward to swear that which is not the fact; he would not purchase an acquittal by such means, and therefore it is, gentlemen, that you have not witnesses to prove he was not there, or to prove he was inactive upon the occasion.

The next witness, gentlemen, was Mr. Morton: he goes in direct confirmation of every thing sworn to by Lyster, though he does not prove the same individual paper; but he remembered hearing the words of such another paper read, it began with the words, "Citizen

soildiers, to arms!" This evidence, though not decisive of itself as to the identity of the paper, is corroborative of the testimony of Lyster, and shows that Mr. Rowan was there. Thus stands the evidence as to the publication. Can any man doubt that this paper was published by Mr. Rowan? It is not necessary for me to tell you what is a publication in point of law, as to writing or printing; but putting it into circulation is a publication in law and fact. I forgot to take notice of the other impotent attempts to impeach the credit of Mr. Lyster by the evidence of Smyth, who could not prove any thing; and the evidence of an unfortunate woman, between whose daughter and Mr. Lyster's brother there had been some attachment. But that I leave as matter of law to your lordships to state to the jury. Thus stands the evidence; and with regard to the publication, if I were upon the jury, no earthly consideration could induce me not to give a verdict of conviction.

I shall now beg leave to call your attention to the publication itself. It is charged in the information that it was designed to overthrow the Government, to overawe the Legislature, to create tumult and disorder. There are paragraphs in the paper to warrant every charge contained in the information, which is, in point of law, sufficiently sustained. If there be a single paragraph of this paper to warrant the jury to draw this conclusion, that it was intended to throw the Government into disgrace, to excite the subjects to make alterations in the Government by force, to excite them to tumult, to overawe the Legislature by an armed force; if, I say, there is a single paragraph in this paper, from which you can draw that inference, it sufficiently proves the subject matter of the information. The gentleman concerned for the defendant read, from the account of a trial, what an English jury did in the case of the *Morning Chronicle*, as an example for an Irish jury, as if that was to bind you upon your oaths; and yet what was the case? The jury thought that a printer, endeavouring to get his bread, was not as guilty as the person composing the libel, and that the former did not distribute it with any malicious view. But suppose 500 juries found such a verdict, are you to follow their example? I am wishing to take up the distinction made by the defendant's counsel and my learned friend in the prosecution. If this paper had rested with the invitation of the Volunteers to arms, he never would have instituted this prosecution upon that account. As in the case in England, Lord Kenyon said, "*latet anguis in herba*, there may be much to censure." But here is a publication teeming with faction, tumult, and sedition; it is impossible to suppose it was intended for the old Volunteers, it comes from the Society of United Irishmen. The first words have been passed over by the defendant's counsel, but they shew at once the wicked adoption of French principles and French language. Is there any man who does not know that at that period, the French revolutionists universally adopted the expression of "Citizens." This paper begins, "Citizen soldiers, you first took up arms to protect your country from foreign enemies and domestic disturbance; for the same purposes it now becomes necessary that you should resume them." It is not confined to summoning the Volunteers to protect their country, it calls them to political discussion:

was this a period for such proceedings? "A proclamation has been issued in England for embodying the Militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, for repressing all seditious associations; in consequence of both these proclamations it is reasonable to apprehend danger from abroad and danger at home. For whence but from apprehended danger are those menacing preparations for war drawn through the streets of this capital? or whence, if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that Volunteer honor which was hitherto inviolate." Gentlemen, was public credit affected or not? Was there a man at that time who could reckon upon the security of his house for a night? "Whence are those terrible suggestions, and rumours, and whispers that meet us at every corner, and agitate at least our old men, our women, and our children? Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you Volunteers of Ireland are therefore summoned to arms at the instance of Government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." If this were a real invitation to the Volunteers, it would endeavour to reconcile them to Government. They were called upon to defend, to stand or fall with the constitution, which they had, so much to their honor, exerted themselves to establish. But here follows a direct insinuation calculated to excite jealousy between the Government and them. "We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud, even amidst the storm raised by the witch-craft of a proclamation." Is that a peaceable invitation to the Volunteers? "that to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance;" here the country is represented to be in such a state, that every man is called upon to rescue it from insignificance; "to your renovation must be owing its future freedom and its present tranquillity; you are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external hostility, and to maintain that internal regimen throughout the land which, superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war." This is a peaceable, quiet invitation to the Volunteers, setting them against the legalised establishments of the country, and against that measure which was in agitation.

It is called a "suspected militia." The establishment of a great constitutional force, a militia, will be soon experienced to be of advantage to the kingdom, and not an oppression; but too fatal have been the consequences of decrying it; opposition was given to the militia law, and numbers have fallen sacrifices to their error. It is nothing less than an order to the army to disband; that body of men to whom we owe the safety of the state, are told they are not to be entrusted. "Citizen soldiers, to arms, take up the shield of freedom and the pledges of peace—peace, the motive and end of your virtuous institution—war, an occasional duty, ought never to be made an occupation; every man should become a soldier in the defence of his

rights; no man ought to continue a soldier for offending the rights of others; the sacrifice of life in the service of our country is a duty much too honorable to be intrusted to mercenaries." In another paragraph it says, "By liberty we never understand unlimited freedom, nor by equality the levelling of property or the destruction of subordination; this is a calumny invented by that faction, or that gang, which misrepresents the King to the people, and the people to the King." What is the meaning of this paragraph? it was unintelligible to me, until I heard the argument of the counsel; he did fairly avow it to be the Government of this country, that a gang was formed to preserve themselves in power; otherwise indeed it is the most rank nonsense and ribaldry that ever fell from the pen of man; it seems to be a French idea, to excite tumult in the whole body of the people. The publication goes on and says, "Here we sit without mace or beadle, neither a mystery nor a craft, nor a corporation—in four words lies all our power, **UNIVERSAL EMANCIPATION** and **REPRESENTATIVE LEGISLATURE**; yet we are confident that on the pivot of this principle, a convention, still less a society, less still a single man, will be able first to move and then to raise the world. We therefore wish for Catholic emancipation, without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is—wide enough to admit three millions—it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer. The Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect but to society—to no creed but Christianity—to no party but the whole people. In the sincerity of our souls do we desire Catholic emancipation; but were it obtained to-morrow, to-morrow would we go on, as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own." Here the libel recommends an emancipation to the Catholics, as a colourable pretence for accomplishing their other schemes. "For both these purposes," says it, "it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization—here the very terms made use of by the French revolutionists are again adopted in this publication—"is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause and an united nation."

In the subsequent paragraph, the author enforces the necessity of the speedy meeting of conventions.—"If," says he, "a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness; the union of affection and exertion will dissolve; and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risque the tranquillity of the island; which can be obviated only by the influence of an assembly arising

from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation—unless the sense of the Protestant people be, on their part, as fairly collected and as judiciously directed; unless individual exertion consolidates into collective strength; unless the particles unite into mass, we may perhaps serve some person or some party for a little, but the public not at all.” Does this mean to give the fullest dominion to the whole body of the people, to overawe the governing executive power? Gentlemen, the mass of the people is to be collected after the French manner, and bear down all before them. French doctrines were to be carried into execution. Are those the innocent examination of claims, and the discussion of great political subjects? To what part of the discussion was it necessary to tell the army, that “seduction made them soldiers?” Was it necessary for the deliberation of that great question, the emancipation of the Catholics of Ireland, to say to the army, “seduction made them soldiers, but nature made them men?” The words are, “We now address you as citizens, for to be citizens you become soldiers, nor can we help wishing that all soldiers partaking the passions and interest of the people would remember, that they were once citizens, that seduction made them soldiers, but ‘Nature made them men.’” I say, gentlemen, where was the necessity of telling the army, that seduction made them soldiers? Was it necessary to detach them from their duty, for the purposes which this publication intended to accomplish? You are told that their whole creed, their whole system “lay in four words, UNIVERSAL EMANCIPATION and REPRESENTATIVE LEGISLATURE.” I say, without universal slavery there cannot be universal emancipation, and without the ruin of that constitution, the panegyric upon which produced such a burst of applause in favour of the learned counsel, there cannot be a representative legislature. The legislative authority consists of King, Lords and Commons. But they must have an elected King, and elected nobles to answer their ideas of representative legislature. I am unwilling to state the seditiousness of this libel farther: but there is another paragraph that deserves to be considered, it says, “The nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to save their country in mercy to themselves.” Here the government of this country was called upon to yield to this reform, to anticipate revolution, and save this country in mercy to themselves. The peaceable language of discussion! Can you read this publication and say it was not the intention of the publisher to intimidate and overawe the government of this country? The people are invited to arms to catch a revolution by force, and then the government is called upon to anticipate the revolution by a reform. Is this the peaceable discussion for which the counsel contend? Or is this the freedom of the press, for which I would go as far as any man. Here the libel appoints a particular day for the convention to meet; it says “The 15th of February approaches—a day ever memorable in the annals of this country, as the birth day of New Ireland; let parochial meetings be held as soon as possible; let each parish return delegates;

let the sense of Ulster be again declared from Dungannon, on a day auspicious to union, peace and freedom, and the spirit of the North will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations." Here the military associations were particularly called on to attend the civil assembly at Dungannon: Was it for the purpose of giving weight to their resolutions? Was it for the purpose of sending their resolutions to parliament, backed by the people in arms? It was a national convention to be attended by a national guard—This was the object of this publication as it strikes me; the very able manner in which it was gone through by my learned friend, makes it unnecessary for me to dwell upon it, least I should weaken the force of his remarks. If you are satisfied of the fact that Mr. Rowan did publish the instrument in question, then you will consider whether that publication, was likely to produce the effects mentioned in the information, and you will decide whether the publication was an innocent or a criminal one? I will agree it is matter for your consideration what was the immediate effect of publishing this libel? Immediately after it was read, some copies of it were thrown out to the mob in the street, who called out for more of them, and more of them were thrown out. Here is a fact, which if you believe, is of considerable weight. Gentlemen, in this case there has been no justification, nothing has been said to palliate the publication. You will decide on the matter of this libel, and whether it was published with an innocent intention, or with that seditious view charged in the information.

Gentlemen of the jury, in any case where a man kills another, it is *prima facie* evidence of malice, but it admits of proof to shew the manner in which it was done, and whether the party accused killed the person with a felonious intent, or whether the killing was by accident, and not done with any intention of taking away the life of the party. The allusion comes home; here is a libel, and unless it is shewn by excuse or justification, that it can be qualified, the law will say it is libellous.

In the present case, the learned counsel on the part of the defendant has endeavoured to set your hearts and passions against your consciences and judgments, by representing that the liberty of the press would be destroyed by a verdict against the defendant; but I appeal to the authority to which he appealed to shew what the liberty of the press is, "It is employed as the centinel to alarm us; we should take care it is not abused and converted into a traitor; the instant it degenerates into licentiousness it must be punished. That is an opinion to which every man must subscribe, and which should be as lasting as the constitution itself. Gentlemen, I have trespassed too long upon your patience; if you can reconcile it to your oaths, that Mr. Rowan did not publish this paper, or that it does not contain any matter libellous, no man will be better pleased at an acquittal than I shall. But on the other hand, I conjure you by your oaths, that uninfluenced by power or prejudice, favour or affection, you discharge your duty to God, your country, and yourselves.

Earl CLONMEL, Lord Chief-Justice.—Gentlemen of the Jury. At this late hour, it is some relief to the bench and myself that the

learned gentlemen of the bar, on both sides, have so ably spoken in this case, that it is not now necessary for me to be very prolix or voluminous in my observations. I shall therefore, for your convenience and that of the bench, contract my observations within as short a space as, in the discharge of my duty, I think I ought to do. Before I go into the particulars or give any opinion upon the publication, I think it my duty to state and fully apprize you of a statute which passed the last session of parliament in this kingdom, by which it is declared and enacted, that upon all trials by indictment or information, (which, if it wanted it, is an additional solemnization of this mode of trial) where issue is joined, as in the present case, for making or publishing any libel, the jury may give a verdict of guilty or not, upon the whole matter put in issue, and shall not be required or directed, by the court, to find guilty merely upon proof of publication, provided the court shall, according to their discretion, give their opinion upon the matter in issue, in like manner as in other criminal cases. I shall endeavour, as far as I can, to conform to the spirit and words of the law. You had the power to do so before, perhaps you had the right; this act of parliament is a legislative exposition of that right, and you will exercise it as becomes you. Though the evidence is not long or complicated, yet the paper is both long and complicated, therefore I will adopt that order which has been made by the bar, and class my observations under four heads, being the leading objects complained of in this information :

1st. To make the government odious by endeavouring to disparage and degrade it.

2d. To render the people discontented, not only with the government, but the constitution.

3d. To solicit the people to take up arms, to intimidate the legislature.

4th. Endeavouring, by tumult and by force, to make alterations in the constitution and government, and overturn them both.

Gentlemen, every thing which I shall say to you, will fall under one of these heads. The information, of which I have an abstract in my hand, is that Archibald Hamilton Rowan, maliciously designing and intending to excite and diffuse among the subjects of this realm, discontents, jealousies, and suspicions of our lord the king and his government, and to raise dangerous seditions within this kingdom of Ireland, and to draw it into scandal and disgrace, and to incite the subjects of our said lord the king to attempt by force and violence to make alterations in the state and constitution, and to excite the subjects of our said lord the king to overturn the established constitution of this kingdom, and to intimidate the legislature of this kingdom by an armed force, on the 16th of December, in the 32d year of the king, in the county of the city of Dublin, wickedly, seditiously, and maliciously, did publish a libel of and concerning the government of this kingdom, according to the tenor and effect following :—" Society of United Irishmen to the Volunteers of Ireland," &c. They state themselves to be a self-created body; they state it vauntingly, they say they have no authority save that of reason, they have no authority in the state. I will therefore consider the language of this paper as that of a body not known to the constitution, calling upon

the subjects at large, though they scorn to call them so. Let me bring to your minds, that one gentleman thought the address was to a new created body of Volunteers; another gentleman thought it was addressed to the original and respectable Volunteers; take it either way, if addressed to the new created Volunteers it was for the purposes of sedition, and if to the old original Volunteers, it would be still more dangerous if they were to succeed with them in altering the constitution by force. It is stated, "William Drennan, President, Archibald Hamilton Rowan, Secretary." This is a strong presumption that Mr. Rowan was acquainted with every part of the paper; it professes upon the face of it that he was secretary of this society. I shall come, by and by, to the question of publication; if he published it, there does arise a presumption that he knew what he published: I go no farther with that observation. He says, "Citizen soldiers, you first took up arms to protect your country from foreign enemies, and from domestic disturbances. For the same purposes it now becomes necessary that you should resume them." Citizen soldiers, you first took up arms, that is, in my judgment, you took them up originally for these two purposes, it now becomes necessary you should resume them for those purposes. "A proclamation has been issued in England for embodying the militia, and one in Ireland for repressing seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad and danger at home." The printed paper has been proved and read; it says—"For whence but from apprehended danger, are those menacing preparations for war drawn through the streets of this capital, (*inuendo*, menacing the city of Dublin) or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that Volunteer honour which was hitherto inviolate." In my opinion these words fall directly within one of those heads I have stated, as rendering odious to the king's subjects the proclamation as insincere and hypocritical, as creating internal commotions, which it intended to restrain, and that embarrassment, which was not found; that it went further to the ruin of the country, shaking the credit which was not affected, and blasting the Volunteer honour which was hitherto inviolate; as if it was said to be blasted by the executive government. This was, in my mind, a charge of having created disorder not before existing, of shaking the credit of the country contrary to the duty of government; and blasting that Volunteer honour, which until this instrument appeared never was violated. It is charging them, in my opinion, as insidiously as the meanest mind can conceive, with perilling in a most vital part, the peace and the credit of the country. Whether it was calculated to inflame the minds of the subjects, will be for your consideration, on your oaths. It says, "These were rumours and suggestions which agitated our old men, our women, and children." What is that? Why, this is all an imposition of government, they wanted to frighten you by a bugbear. "Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you, Volunteers of Ireland, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." Here was another imputation upon government;

they have raised apprehensions and summoned these persons to take up arms. It goes on and says, "We will not at this day quote authorities for the right of using arms; but we will cry aloud even amidst the storm raised by the witchcraft of a proclamation." "We will cry aloud in the storm." Where or how was it raised? It says, "By the witchcraft of a proclamation." Here was an imputation charged upon the proclamations of government, as raising a storm in the country. It says, "To your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance;" that is, when you were in arms this island was protected and in peace, and appeared to be of consideration; to your relaxation has been owing its impotence and insignificance, therefore it can only be raised again into importance by your taking up arms. If that is the impression of this paragraph, you will consider whether this is a libel upon the government or not. It was a publication not only to the people of this kingdom, but to all the enemies of this nation, saying that this country was in a state of impotence and insignificance. It goes on and says, "That to your renovation must be owing its future freedom and its present tranquillity. You are therefore summoned to arms, in order to preserve your country in that guarded quiet, which may secure it from external hostility, and to maintain that internal regimen throughout the land, which superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war." It is impossible in a work of this kind, were it twice as libellous as it is, if it could be so, that it should not be mixed with some professions, some parts better than others; it must profess something to be received. But it complains of a police and a militia that is suspected. It says, if you do not supersede a police and militia, you cannot preserve the blessings of peace. I say, therefore, in my opinion, no words can be more inflammatory than these are. You are charging the police as an evil sort of an establishment; it is called a "notorious police," and the militia as consisting of persons proper to be suspected, not to be confided in. It says, "You must preserve the blessings of peace by a vigilant preparation for war. Citizen Soldiers, to arms! take up the shield of freedom and the pledges of peace." What does that say? Your arms only are the shield of freedom and pledges of peace; therefore take up arms. "Peace the motive and end of your virtuous institution. War, an occasional duty, ought never to be made an occupation. Every man should become a soldier in defence of his rights." Was it necessary to call them together; if their rights were not attacked, why invite them to collect themselves to defend that right? It says, "No man ought to continue a soldier for offending the rights of others. The sacrifice of life in the service of our country is a duty much too honourable to be entrusted to mercenaries." They assume, or endeavour to assume, the power of the sword, and degrading the king's forces from that power with which they are entrusted, it says, the duty we suggest is too honourable for mercenaries: Is not this saying, do not trust to the military, and at that time when by public authority it was declared that the country was in danger. The Volunteers, in that paper, were called upon to stand to their arms. Every expression of solicitation and stimulation is

used. The Volunteers were called upon to resume their arms; the nation was impotent and insignificant without it. Citizens to arms! you are summoned to arms: take up arms in spite of a notorious police and a suspected militia, and in spite of two proclamations. You are to do your duty to preserve good order in your vicinage, in spite of a police and fencible militia, for they resist peace, and you are to do your duty in spite of those constituted authorities. "It is only by the military array of men in whom they confide, whom they have been accustomed to revere as guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind, in the speedy resurrection of a free constitution, of liberty and of equality—words which we use for an opportunity of repelling calumny." That is, it is only by a military array of men you can have a Free Constitution; that is as much as to say, the people of Ireland have not a Free Constitution. Whether that be the meaning of the paper, as charged in the information, will be for your consideration. The words Liberty and Equality are introduced for an opportunity, say they, of repelling calumny! Where did it come from? Why did the Society find it necessary to repel it? How did they repel it? By the words Liberty and Equality, which they think proper to explain in this way. "By liberty we never understood unlimited freedom, nor by equality, the levelling of property or the destruction of subordination. This is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king; traduces one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland." Here, he says, a Faction or Gang misrepresents the king to the people. Is not this an aspersion, endeavouring to render the governing power odious? What is this gang which he says misrepresents the king to the people? I leave you to determine. Why is the misrepresentation? The paper insinuates for the purposes of power which they abuse. "Liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will." These are terms, gentlemen, which you may probably understand, though they are conveyed in an unascertained and declamatory stile. Gentlemen of the jury, at the time that the qualification of a voter to give his suffrage to a candidate for a seat in parliament was originally ascertained, forty shillings was equivalent then, as it is calculated, to forty pounds of our present currency; from the time of Henry I. to Queen Anne, the value of money had advanced in a ratio of one to twelve; from that time to this it has been as one to twenty; so that a man then having an estate of twenty shillings a year was equal to a man's having an estate of twenty pound of our present money. The elective franchise never was in the whole body of the people in

Great Britain or Ireland.* It says, "That legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness—If our constitution be imperfect, nothing but a reform in representation will rectify its abuses." In figurative abstracted expressions it is not easy to ascertain the meaning; although you have an impression of the object. This may be a very innocent proposition; but to me it may be a very wicked one, when applied to be obtained in the manner here pointed out: it says, "nothing but a Reform will rectify its abuses—nothing but a Reform will perpetuate its blessings;" and then it goes on and says, "We now address you as Citizens," &c. Not a word of *subjects* from beginning to end—that is a word driven out of fashion, at least in this publication—"Seduction made them soldiers, but nature made them men." What had this charge to the soldiers to do with a parliamentary reform? I quarrel not with the composition, it is not my duty, but in my mind here is a direct charge upon the military, that they were imposed upon, that seduction had made them soldiers. The sword is put into the hands of the sovereign, he is vested with it by the constitution, and yet this paper says, it was made an instrument of seduction. "We address you without any authority, save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce—here we sit without mace or beadle, neither a mystery, nor a craft, nor a corporation."

Here they acknowledge they had no proper authority to call the people to arms, which they assume to do by that publication; they avow that this society did make no corporate body or legal authority. They add, "In four words lies all our power, **UNIVERSAL EMANCIPATION** and **REPRESENTATIVE LEGISLATURE**. Yet we are confident that on the pivot of this principle, a convention, still less a society, less still a single man, will be able first to move and then to raise the world." I rest here a little to consider what idea this writer must have of the power of the paper, when a single man will be able first to move and then to raise the world; one of the charges is, that this paper intended to stir the people to arms, it is an admission here, a profession, a vaunt, that the society, nay less, a single man, may move and then raise the world; the expression is not one kingdom, but to raise *the world*. If any thing like it has happened, it is a miserable consideration. "We therefore wish for Catholic emancipation without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is—wide enough to admit three millions, it is narrow, when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation." It is but a portal to freedom: what, unqualified emancipation! It is for you to consider what the beloved principle is. Emancipating three millions is opening a portal—what portal? one which takes in every individual of the Irish nation—where? into power, into the elective franchise; it embraces all that think, and feels for all that suffer. "The Catholic cause is subordinate to our cause, and included in it, for as United Irishmen, we adhere to

* Vi de Prynne Brev. Parl. red. p. 187. & 2 Whitelock p. 90. *contra*.

no sect but to society, to no creed but christianity, to no party but the whole people. In the sincerity of our souls do we desire Catholic emancipation: but were it obtained to-morrow, to-morrow would we go on, as we do to-day, in the pursuit of that reform which would still be wanting to ratify their liberties as well as our own." You, Roman Catholics, emancipated to-morrow, will not stop us, we will go on, and unless you go on with us, it will not be sufficient to establish your liberty. "For both these purposes, it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals or even bodies of inferior authority, and therefore an assembly of a similar nature and organization is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrection, instigated by the malignity of our common enemy, may commit the character and risque the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with people, and whose spirit may be, as it were, knit with the soul of the nation: unless the sense of the Protestant people be, on their part, as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into mass, we may perhaps serve some person, or some party for a little, but the public not at all; the nation is neither insolent nor rebellious nor seditious; while it knows its rights it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to save their country in mercy to themselves."

Gentlemen, this last paragraph is a menace; for if the proposal made is not accepted, a revolution is threatened. The paper in question proceeds in the following words: "The 15th of February approaches, a day ever memorable in the annals of this country as the birth-day of New Ireland; let parochial meetings be held as soon as possible; let each parish return delegates. Let the sense of Ulster be again declared from Dungannon, on a day auspicious to union, peace and freedom, and the spirit of the North will again become the spirit of the nation. The civil assembly ought to claim the attention of the military associations." The civil assembly was to be attended by military forces; was not the intention to alter the constitution? "We have addressed you, citizen soldiers, on this subject, from a belief that your body, uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends." Armed citizens was the favourite object that was to be gained; it says, "We presume not at present to fill up the plan or pre-occupy the mode of its execution, we have thought it our duty to speak. Answer us by actions. You have taken time for consideration. Fourteen long years are elapsed since the rise of your associations." This part is very material, it says to the people,

"take up your arms," and it says, "answer us by actions." What are the actions of men in arms? Armed associations will support the different meetings. We have spoken out to you: answer us with your actions. "Fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented? How many nations, in this interval, have gotten the start of Ireland?" How far Ireland has been backward in the number of good subjects, have they asked? No. The question here is, how many nations have gotten the start of Ireland? What is meant by this start? What nations are there, that have in fourteen years advanced more than ourselves in happiness? None. What actions of other nations would that publication recommend to Ireland to follow? It concludes with this sentence; "How many of our countrymen have sunk into the grave?" Gentlemen, I have gone through the paper mentioned in the information, and made such observations as I thought necessary. I do, as it is my duty, tell you, that I think it deserves the appellations given to it by the information. I take it to be a scandalous and seditious libel; but that is my opinion only. Gentlemen of the jury, it is you who are to decide the question, whether you think it is a scandalous or seditious libel. The verdict will be yours, and not mine.

Gentlemen, in order to support this prosecution, the first witness that was produced is John Lyster; he told you [here his lordship stated the testimony of Lyster, as given upon his direct examination.] On his cross-examination he gave an account of the manner in which he communicated this matter to Mr. Kemmis, the Crown Solicitor; said he would communicate to him what he knew; produced the paper that was read in part by Mr. Rowan. Said he did not know where Mr. Rowan stopt reading. Says he, the witness, did not purchase his commission as ensign in the army; got it through the interest of Lady Hobart, his relation. The witness attested two bonds, there was an issue directed to try whether those bonds were genuine. Was asked whether he was examined as a witness at that trial; believes he was examined as a witness; the issue was tried before Mr. Justice Boyd; there was an award of £200 out of £800. Says Mr. Lambert filed a bill against him about a note of £147 which Peter Hamilton passed to witness. Attempts were made to impeach the credit of this witness upon three or four grounds: 1st. He was a witness to the bonds which were alledged to have been forged—an unfair transaction. 2d. That he got the note from a person alledged to be insane. 3d. That he had got a commission. 4th. That it was not probable he made this memorandum. I can only say, he has given a rational account of this business; but it is your duty to judge of his credit; it is my duty to make observations, which it is your duty to reject if they are not well founded. He says he is an ensign in the 40th regiment. He got the commission through the interest of a relation; and it appears the arbitrators did give his brother since, part of the demand, by which, if it weighed a feather in the case, they thought the bond was not a forgery. Says it was usual to take memorandums on getting papers of this kind. Says there was about 150 or 200 Volunteers in the room. Was Lyster's evidence not satisfactory to you, he was the

only witness to this great part of the case. This observation has been made : "What! 150 persons present, and not one of them comes forward to attest the innocence of Mr. Rowan!"*

* * * * *

But the next witness does, in my apprehension, as far as he goes, confirm every word said by Lyster. Morton says, he saw numbers of persons in the room doing some business at the table. Saw Mr. Tandy and Mr. Rowan in the room. The witness had seen them before that day. He identified Mr. Rowan in court. He appeared to take an active part in the business. Witness got admission into the gallery. He saw a bundle of papers on the table, several were distributed to the mob in the street, who called out for more. The witness got a paper, which he gave to a person who said he had lost it. Witness said he heard part of a paper read, containing the words "Citizen soldiers, to arms." If it stood upon this man's evidence, here was not evidence of publication; and if it rested upon him alone, you should acquit the defendant; but as corroborating the testimony of Lyster, it is very material. If the counsel for the defendant intended to discredit the witnesses for the prosecution, they have failed. A gentleman from Galway, a Mr. Blake, was produced, who says he now lives in Dublin, gave his evidence as to Lyster, which I shall come to by-and-by. Morton's credit was not questioned. Morton, on his cross-examination, said, he was an apprentice to a gold-beater—believes the persons he saw at the room in Cope-street were in the uniform of the old Volunteers—is sure he saw Mr. Rowan there—some of the persons wore scarlet with different coloured facings—witness said he could see from the gallery what was done at the table. He gave the paper, the day he received it, to a person in the house where the Dublin Journal is printed. The paper was then read which I have stated to you, and you have heard so much of. Here the prosecution was rested. On the part of the defendant was produced Mr. Francis Blake, to show that John Lyster was a person not to be credited upon his oath. Mr. Blake was asked whether Lyster was a man to be believed upon his oath; he answered he could not say he is not to be believed upon his oath; but he would hesitate. The witness was produced to show that Lyster should not be believed upon his oath, but Blake said no such thing. In a question, whether the oath of one man ought to be received, where another man swears he ought not to be believed upon his oath; then you would have one man's oath against another. The credit of Lyster is not affected by what Mr. Smith the second witness has said. The third witness to this point was Mrs. Hatchell; she said she knew John Lyster; she was asked whether he was to be believed upon his oath? she said, according to her opinion, he was not to be believed upon his oath; she said the witness, John, had prevailed on his brother to quit his wife, and said he was married to another woman, which was not truth—said she heard declarations from John's elder brother, and that

* The editor is here under a necessity of introducing an hiatus, the printer having refused to print this part according to the notes furnished to him by the editor. (Original note by Mr. Rowan to his own Edition of this Trial.)

was one of the reasons why she said the witness, John, ought not to be believed upon his oath. In the usual course of evidence no proof has been adduced to prove that the witness Lyster ought not to be believed upon his oath.

Gentlemen of the jury, I think this is the evidence on both sides, as correctly as I have been able to take it. As to the fact of publication, it is my duty to tell you, there is very strong evidence that Mr. Rowan did publish that paper, and did publish it knowing what he published; and as to the other matter, whether it is a libel, I have told you I thought the matter libellous—libellous in the extreme; I now tell you, that is my opinion. If you, upon the whole matter, believe, upon your oaths, that Mr. Rowan published the paper, and with the criminal intention stated in the information, and for the purposes ascribed to him, you ought to find him guilty, for I think the paper entitled to, and deserves the appellation annexed to it—it is a seditious libel. If you believe he did not publish it; if you disbelieve the evidences which have been uncontradicted; if you believe he published it by mistake or ignorance, not meaning to publish this paper, which might happen, but of which there is not a tittle of evidence in this case, you will find him not guilty. I will state this direction in other words; if you find him guilty, it must be, because you believe in your consciences he published it, and that you believe the inuendoes are true; meaning, as well as you understand this paper, reading it separately or collectively together, that he published it with a criminal intention; that is, adopting its sense and meaning. If you acquit him, it must be, because you do not believe he published it, or that he did not mean to adopt its sense and meaning. I must tell you, his thinking it not mischievous, is not a reason why you should acquit him. His thinking he was doing right, if you believe the intention of the paper was to raise forces to intimidate the legislature, which is the great object complained of, though he was thinking he was right to accomplish his object by every means, will not be an excuse; that would lead to the acquittal of every felon upon earth. If a man was accused of a felony, and he thought he was doing a right thing to murder his neighbour, thinking he was doing a right thing would be no excuse to him. If the defendant's object was merely a reform in parliament, yet if he endeavoured by force, or by illegal means, to obtain it, you ought to find him guilty. I have stated the facts, and made such observations as occur to me to be necessary—I have stated the point of crimination, and I now leave to you to dispose of the question; and have not the least doubt you will do as becomes you. If I have been defective, I shall be corrected by my brethren, whom you will hear with pleasure and information.

The honourable Mr. JUSTICE BORD.—Gentlemen of the Jury. My Lord Clonmel has so fully stated the information, it is not necessary for me to repeat it. With regard to his observations, I adopt them every one in the same degree of latitude in which he delivered them: I think the paper deserves the appellation in the information; it is a false, scandalous, and malicious libel. My Lord Clonmel mentioned an act of parliament which was made upon its being thought the judges went too far in former cases, it gives you power to decide on questions of this kind, whether libel or not; you are to give your

opinion on the whole of the matter, and therefore you are not bound to find according to our direction. My opinion concurs with Lord Clonmel's, that the paper is a libel. If you, gentlemen of the jury, are of a different opinion, you are not bound to go by the opinion of the court, in point of law, in a case of libel. You have heard the evidence, and the first question which arises is, whether there was any publication of this paper by Mr. Rowan? If you are of opinion that Mr. Rowan did not publish the paper in question, you must acquit him. If you think it is not a libel, even though he did publish it, you ought to acquit him. If he published it by mistake or ignorantly, that is a ground for acquittal. But his own opinion of what he thought right, even in obtaining the emancipation of the Catholics, or a parliamentary reform by force of arms; however laudable he thought himself, the intention of the publication was a criminal one, and in that case you ought to find him guilty.

The honourable Mr. JUSTICE DOWNES.—Gentlemen of the Jury. The few words I shall trouble you with, will be in concurrence with what you have heard from the rest of the court. The fact of publication depends upon the evidence you have heard, and the degree of credit you will give to the witness. I agree in the observations upon Lyster's testimony, no degree of difficulty occurs in contradicting him, if what he said was false. If you do believe that Lyster deserves credit, the publication of this paper is proved to have been made, industriously, by the defendant, knowing its contents; and under such circumstances as, I should not hesitate to say, adopted its contents. If you believe it was published under these circumstances which you have heard, it will be for your consideration to determine, whether it be a libel, and with what intent it was published? I concur in the observations upon its contents, and I am unable to read it without being of opinion that the tendency of this paper is to excite to arms the persons to whom it was addressed, and for the purpose of making alterations in the government of this kingdom, as charged in the introductory part of the information. If you believe the account of the mode of publication given by Lyster, and believe the defendant adopted this paper as his act, you are to look for the intent upon the paper itself, and on which you are to decide. If you believe that the general tendency of it was to excite tumult in the country, and to call to arms any description of men, no doubt can be entertained, that it is libellous, and it must be imputed to the defendant, he having given no evidence of a contrary intention. To attempt to effect by force any alteration in the constitution of the country, or to overawe the legislature by force—any such act of force would be high treason; and to publish a paper to excite people to do such an act, no man can doubt is a libel. If you do think such was the tendency of the paper in question, you cannot hesitate to find the defendant guilty. There was no evidence to shew the tendency of the paper was of a contrary nature. The intentions of the publisher are deducible from the paper itself; if it was the purpose of the publisher of the paper to attain an alteration in the state by force, it was a criminal intention, however desirable the alteration might be supposed to be, or whether the object sought for was in itself right, or not. I will not trouble you any farther. I have given the

case the best consideration I am able. You will decide upon it according to your oaths, and I have no doubt the defendant will have every justice in your hands.

The jury withdrew, taking with them the printed paper which had been read in court, and in about ten minutes returned, and brought in their verdict,

We find Archibald Hamilton Rowan—GUILTY.*

Lord CLONMEL.—Do the counsel for the defendant desire four days time to move in arrest of judgment?

Mr. CURRAN.—The only instructions I have from my client are to disclaim any application of that kind: he does not wish to take advantage of errors in the record, if any there be, but is now ready to attend to receive what sentence the court may be pleased to pronounce.

Lord CLONMEL.—(After conferring with the other judges) We will not pronounce judgement till four days.—Mr. Sheriff take care of your prisoner.

The counsel for Mr. Rowan here objected, that he was not a prisoner—he had not been in custody—he had not given bail upon this information—he was bound in no recognizance—was served with no process—he had appeared to the information by attorney;—he pleaded by attorney—the issue was tried after the manner of a civil action, a word merely of the record being read, and the defendant was not given in charge to the jury as the practice is, where he appears in custody. Mr. Rowan attended the trial, it is true, but the court had no judicial cognizance of him; the information could have been tried in his absence—he attended as a common auditor, and the witness being called upon to point him out at the desire of the bench, might have been a satisfaction to them to see that the witnesses were speaking of the same person, but it was altogether unprecedented in such cases as the present. Mr. Rowan was ready for sentence—he claims no indulgence—does not insist upon the four-day rule; but if the court, for their own accommodation, choose to defer the sentence for four days, they have no legal authority for sending Mr. Rowan to prison, until sentence pronounced, or the usual and accustomed process issued against him.

Lord CLONMEL.—If the Attorney-General consents, I have no objection.

The Attorney-General had left court, and the Solicitor for the Crown remained silent.

Lord CLONMEL.—The defendant is a convict, as such he is a prisoner—the law must have its course. Adjourn the court.

Accordingly the court was adjourned.

Mr. Rowan was conveyed to the New prison, attended by both the Sheriffs, and a formidable array of horse and foot guards.

* When this verdict was first brought in, there was a loud clap of approbation commenced in the outer hall, it is presumed from a misconception that the jury had acquitted the defendant; for when the verdict was repeated, and the word *guilty*, sufficiently stressed, the clap was changed into hootings, and hissings, and groans, that lasted with very little remission, during the remainder of the sitting of the court.

MONDAY, February 3, 1794.

A *habeas corpus*, grounded on the affidavit of Mr. Matthew Dowling, Mr. Rowan's solicitor, was granted to bring up John Coultry, confined in Newgate for debt, to swear an affidavit; Mr. Rowan was also ordered up for the same purpose; when their affidavits, together with those of William Porter, John William Atkinson, and Francis Clarke, were sworn.

Mr. RECORDER moved the court to set aside the verdict obtained on Wednesday last and grant a new trial in this cause, pursuant to a notice served on Mr. Attorney-General, and grounded on these affidavits, the contents of which he set forth.

Mr. ATTORNEY-GENERAL, having after some time come into court, moved the court to appoint a day to have Mr. Rowan brought up for judgment.

Lord CLONMEL appointed to-morrow, and at the same time acquainted the Attorney-General with the Recorder's motion, and the nature of the affidavits.

The ATTORNEY-GENERAL then desired to have them read; which they were as follows:

The affidavit of Porter stated that he (Porter) had a conversation with George Perrin, one of the jurors in the case, on the Wednesday previous to the trial, and that Perrin said that the country would never have repose until Napper Tandy and Hamilton Rowan were transported or hanged. Atkinson deposed in his affidavit to several disparaging remarks made by George Perrin relating to the traverser, and that he (George Perrin) on one occasion, previous to the trial, had said that Rowan and several others (of the Volunteers) deserved and ought to be hanged. The affidavit of Coultry charged Lyster with personating his brother and swearing to the property in a horse which had been seized for debt, and which Lyster made affidavit was his, he swearing that he was George William Lyster, who in fact was one of his brothers; Clarke's affidavit stated that Lyster having been summoned by him to the court of Conscience had sworn falsely there, that he did not know and had never seen Clarke, the fact being that Lyster had been during six years in the habit of frequenting Clarke's shop, and had spoken with him a few days previous to Lyster's making such oath. Mr. Rowan stated in his affidavit that several persons whom he had not known before the trial would be material witnesses to impeach the testimony of Lyster, that some members of the jury had, previous to the trial, uttered speeches disapproving of the conduct of Mr. Rowan; and, further, that he had no doubt, from daily enquiries made and then being made into the life, conduct, and character of Lyster, that he would be enabled to prove him to be a man who ought not to be believed upon his oath. After Mr. Rowan's affidavit had been read, he was advised by counsel to make another, and was permitted by the court. This further affidavit utterly denied the fact of publication sworn to by Lyster and Morton; stated that Mr. Rowan did not previously know the circumstances detailed in the affidavits of Clarke, Porter, Coultry, and Atkinson, that John Giffard the Sheriff, was a Government Journalist, had an office in Revenue, was prejudiced against Rowan, and has endeavoured to empanel jurors prejudiced like himself.

After it was read the court asked the Attorney-General, whether he wished for time to have these affidavits answered; to which he having replied in the negative, the court ordered Mr. Rowan to be brought up on the following day; and adjourned.

TUESDAY, February 4, 1794.

Mr. RECORDER said he was instructed that there were four new affidavits, sworn to the same purpose as those read yesterday, to prove that others of the jurors had used expressions of enmity against Mr. Rowan before the trial, and prayed that they might be read.

Mr. ATTORNEY-GENERAL objected, for that yesterday was the last day, in which any affidavits could be made, and now it was attempted to bring others without any notice; he was willing that this case should meet the fairest and fullest investigation, but would not consent that the rules of court should be departed from on this, more than on any other occasion.

Mr. RECORDER.—I am very sensible that in ordinary civil cases, where any motion is made to set aside a verdict, the party must apply within four days, and lay a sufficient ground for the motion; but even then the court would sometimes indulge the party with another day, to lay before it new materials, in advancement of justice.* The intention of the traverser, or his counsel, was not to do anything by surprise, or to bring these affidavits hastily forward, to prevent the crown from answering them; we are willing to give any reasonable time for that purpose. But your lordships will consider the circumstances in which this traverser stands; that he is in confinement and not at liberty to search for evidence, or the necessary materials for his defence; not standing in the situation of a defendant in any civil action, but in a situation which the law regards so far, as never to impute laches to any man whilst he is in prison. If it is necessary, I am instructed that affidavits can be made, that the matters, now brought forward, were only discovered since the rising of the court yesterday, and there is scarce an hour that further evidence does not come forward, tending to show the truth and reality of the present case. The information now offered to the court has been so lately brought to light, that the agent has not had time to brief the affidavits; I have only been informed, on my way into court, of the purpose for which they are brought forward, and am still ignorant of their contents; and as the justice of the case may be advanced, and no inconvenience can result from it, I trust your lordships will allow these affidavits to be read, and the motion either to go forward now, or to wait till the counsel for the crown shall have an opportunity of answering them.

Mr. ATTORNEY-GENERAL.—The rank, character, or situation of any man standing in this court accused of a crime, I conceive to be a matter of perfect insignificance, when put in competition with the settled rules of distributive justice. There are a certain number of days given to move in arrest of judgment, or for new trial; within

* For the rule in criminal cases, see *Rex v. Holt*, 5 T. Rep. 436; *Rex v. Hetherington*, 5, Jurist, 529; *R. v. Scully*, Al. & Nap. 262; *Rex v. Teal*, 11, East, 307.

which the party is to lay before the court the ground upon which he means to move : all then that is insisted upon is that this defendant should be bound by the same rule that binds every man in the like circumstances : for if a party should be at liberty from day to day to bring forward new affidavits, there never would be an end of any prosecution.* Mr. Recorder's observation shows the good sense of this rule ; he says new materials are pouring in every hour—I doubt it not ; and that new affidavits may come in to-night ; and the same arguments used to-day will be used to-morrow.

Mr. CURRAN.—There was no objection made yesterday to the reading of affidavits, which were made and sworn in the presence of the court. Mr. Attorney-General has himself said that the defendant was at liberty yesterday ; if so, he is equally within the rule to-day, for this is only a continuation of the same motion :—this is a question put, as it were, to the conscience of the court, viz. do your lordships think that justice has been so done, that it ought not to be sent to a new enquiry ; and shall any rule of practice be suffered to preclude the light which should inform that conscience ?—It would be absurd that no distinction should be made between ordinary and extraordinary cases ; in small matters summary justice is enforced ; but in such a case as this is (he would speak as guardedly as possible) the court will consider that punishment is not inflicted vindictively, but for example and prevention ; and that nothing gives so much force to the preventive effect of sentences of courts of justice, as all the world being able to say, every fair enquiry has been made, and the sentence has passed in consequence of an impartial verdict. There is a way known to our law to set verdicts aside, where there has been any abuse of justice ; any fault in the returning officer, the jury, or the witnesses ; or any mistake in the court : all applications and information for this purpose have been received with indulgence ; and upon the most cool enquiry it has been found that the verdict, upon which the sentence was had, must have satisfied the reasonable, fair, conscientious mind of any man ; this it is which gives to the sentence of the law that good and tranquillising effect, for which alone it is intended.

We are now prepared to shew that more of these jurors have made express declarations of malice, and shall it lie in the mouth of the prosecutor to say, there is a rule which operates like a trap upon the conscience of the court of King's Bench ; that after a certain moment it becomes so helpless, that let what will arise it can do justice no longer ?

I say the rules are the instruments, not the tyrants of the court ; as to the point of practice it is conceived that trials at bar are not within the four-day rule ; but I go upon a more solid ground, and appeal to this, that the court has a right to receive information, at any time, in furtherance of justice ; if it were necessary to cite cases, there has been a very late one in this court, where it has exercised the very same discretion.

After the verdict was brought in, not having the least idea that there was any fact existing, which could impeach the verdict, the traverser's counsel stated, that if it was the pleasure of the court, he

* R. v. Bowditch, 2 Chitty's R. 278.

should appear to receive sentence; and let me observe that he did not at that time conceive that he was in custody; he was not called on to appear; there was no order, and the only judicial knowledge the court had of his being present, was that a witness turned to him to identify him; if then, instead of being at large, as he ought to have been, he was put into prison, where he had not the same opportunity of procuring evidence, however universally it might exist, can there be a stronger circumstance to shew that he is peculiarly entitled to the indulgence he seeks.

Mr. FLETCHER, on the same side.—When I see the temper of the audience which surrounds me, I shall avoid touching upon public topics with the same delicacy, which the gentleman who preceded me has done. If justice is the object of this prosecution, why stand upon such punctilious points of practice, and *inter apices juris*: in the case alluded to, it was insisted that the four-day rule did apply to trials at bar, but the court decided otherwise, and there is good reason for the distinction; in cases coming from the country this rule is necessary, to prevent the one party from keeping the *postea* in his pocket, until he could surprise the other at a time when he was not, perhaps, so well prepared to impeach the verdict; it is necessary, then, that there should be a fixed time, that no advantage may be snatched; but there is no analogy to a case of this kind, which is entirely in the breast of the court.

In the Dean of St. Asaph's case, a great prosecution instituted, like this, to answer the ends of public peace, and public policy, the court did exercise its wisdom upon the merits of the business before it; the rule was not adhered to, but the parties were let in after the four days had expired. As to the objection which has been thrown out, that if this matter is postponed we may come in to-morrow, and the next day, and so on; it is answered, that we will undertake, if it should lie over till to-morrow, to rest satisfied, and seek for no more materials.

This is merely a point of practice, and it strikes my mind as folly to say, that so high a court as this has not its practice within its own power.

Lord CLONMEL, Chief-Justice.—On the day that Mr. Rowan was convicted, we were called upon for judgment; but we conceived, that even if it was not a matter of right upon adjudged cases, it was still proper, that the defendant should have four days to question the verdict, or move in arrest of judgment: Suppose, instead of that, we had then pronounced judgment, all argument would have been concluded, for it would have been absurd to say, that he should have been suffered, after that, to unravel the proceedings; then what has passed since? A motion has been made and entertained upon affidavits, stating facts, of which the party has had information since that day; I mention this to shew that there has been no precipitancy in the court, nor possible hardship in what it has done. Yesterday Mr. Rowan made an affidavit, some others were also made; Mr. Rowan desired to make a further one, and the court waited till a late hour, till it was composed and sworn; the Attorney-General was then called upon, who declined to answer these affidavits; the court then certainly concluded it was to hear no more of the collecting of materials for this motion,

but that it should go on and be argued like every other of the same kind.

It is said the rule of court, with respect to moving for new trials, does not extend to cases tried at bar, in the city of Dublin; that does not apply to this case, for the reason before mentioned, that within four days judgment would be pronounced; so that from the nature of the thing, this motion must be made within four days.

See what consequences would follow, from the letting in affidavits pending a motion of this kind; there is not an argument to be used by the counsel on either side, that would not lay the foundation for a new affidavit, so that a motion would never have an end.

We are all of opinion, that it would introduce confusion into the practice of the court and be a pernicious precedent, and that the affidavits cannot be read.

[Here there took place some altercation upon the question of practice, who should first go on; the traverser's counsel insisting, that the affidavits *prima facie* entitled them to their motion, and that the usual practice of giving the last word to the crown did not extend to a motion of this kind; but the court, upon the authority of the King against Horne, desired the defendant's counsel to proceed in support of the motion.]

Mr. FLETCHER.—This is a prosecution highly interesting, not only to that most respectable individual (for so I shall continue to call him, notwithstanding the verdict), but who is the immediate object of it, also to the community at large; it is a great prosecution directed upon solemn and deliberate grounds, to attain the ends of public peace and public justice; the court will scrutinise into a verdict that affixes the guilt of a high misdemeanor on a character so respectable; the only end of such prosecutions must be to deter others from the commission of similar crimes, and to satisfy the public mind, and to convince the world that guilty practices do not go unpunished; it therefore becomes necessary, that such a verdict should be free from the shadow of objection, otherwise so far from having the salutary effect proposed, it might have a very different one; men will scan the ground upon which such verdicts have been had; points of practice, and objections *inter apices juris*—amongst the quirks and pranks of the law—will then vanish, and the public will stamp reprobation on a verdict obtained under circumstances of suspicion and unfairness.

The affidavits, on which we ground our motion, are now to be taken as true as the gospel, the verity of them cannot be shaken; the gentlemen concerned with the prosecution have been called on to answer them, and have not done it; these affidavits then furnish three objections to the verdict.

1st. As to the person upon whose evidence alone (upon the face of your lordships' notes) the verdict could be sustained, two or three affidavits go pointedly to show that he is utterly destitute of credit.

2d. There is another class of affidavits impeaching one of the jurors for deep malignity conceived against my client.

3d. There is that of the traverser himself, who swears that the testimony of the witnesses was false, and further that he has reason to believe that the person, who arrayed the pannel, did it through favour, and purposely chose men hostile to him and to his principles.

Now even if any one of these grounds taken separately, were not sufficient to shake the verdict, it becomes a matter of high concern to see whether the result of the whole does not, at the least, furnish a doubt that justice has not been done; if so, it brings it within the great principle upon which alone new trials should be granted. It cannot be expected that a case should be found, apposite in every minute particular; the present case has a good deal of novelty, and I cannot find any accurately agreeing with it; but you have the high authority of that luminary of the law, Lord Mansfield, thus declaring himself in the case of *Bright and Enyon*, 1 Bur. "If we have reason to think that justice has not been done, we will send it to another examination." It is upon such broad principles that I go, and if that was the opinion of his lordship, in a civil action, between man and man, with how much greater reason should it be so in a trial between the sovereign of the land and so respectable a citizen, who is accused of violating the laws of that land, to which it was his duty to be amenable. Will any man in his right reason say, that the great broad liberal principle should not be applied *a fortiori* to a case of this kind, where the liberty of the subject is at stake, with all that he holds dear—where the public peace, and the opinion the world may entertain of public justice, are involved.

Taking it then for granted, that this principle applies at least as strongly to criminal cases, as to civil, there are abundance of authorities in the books—[Here he apologised for not being better prepared, having only got his brief on his way to court.]—In *Bac. tit. New Trials*, there is a case where new evidence was let in, and it is true, there are in the same page, cases where it was refused; what conclusion is to be drawn from this, but that every case of this nature stands upon its own peculiar foundation, and is not to be strictly governed by any decided case, because when it is not a question of abstract law, but a consideration emanating and flowing from a combination of circumstances, never the same in any two cases, it is of all questions that can come before a court of common law, that most peculiarly within its own sound judicial discretion. That can be gathered from reporters, differing in attention and ability, and in some broad principles of general analogy. Wherever there is any strong leading feature in the case, it must be judged of according to its own tendency and effect; it is apparently from the oscitancy of the reporters, from their being unacquainted with the facts, and for want of more correct and particular notes, that we find so much seeming contradiction, otherwise we should find the opinions of the judges nearly the same in all similar cases, but varying with the peculiar circumstances of each particular case; as in the present, the verdict certainly would not be set aside, unless it appeared that the new evidence came to the parties' knowledge since the trial.

But there is a circumstance which, in my opinion, pointedly distinguishes this from all other cases, viz., that the new evidence is applicable to the credit of the principal witness, upon whose testimony the verdict must have been found, and not to any substantive matter, making a particular ingredient in the case. Nor is it a new substantive defence. For the court has wisely said, we will not set aside verdicts on account of evidence, which might reasonably have come

to the knowledge of the party before; for then, whenever the point upon which he rested proved insufficient, he would next shift his ground, and try some new sort of defence.

Having often searched for cases of this kind, I can say, upon my recollection, that there is none like the present to be found. Your lordships then have no guide but your own discretion, and your own notes to recur to, where you will see in what point of view this gentleman's evidence appeared.

At the trial, he admitted that two bonds had been set up by his younger brother against his elder, which he was called to prove, as a subscribing witness. He admitted that the genuineness of these bonds had been the subject-matter of suits in courts of justice; that both his father, in his life-time, and since his death his eldest brother, had impeached the authenticity of these bonds, to which he had signed his name as a witness. He admits an issue out of Chancery to try their authenticity: but they went down, and were the subject-matter of a trial; but that some compromise being mentioned, a juror was withdrawn, and the matter submitted to referees, who gave only £200 instead of £800, which was the value of the bonds. He was asked whether he was examined at the trial, to prove the validity of these bonds. His answer was, I cannot charge my memory with these facts; a pretty extraordinary answer from one who, in other respects, has been so accurate. Since the commencement of this business, he has got a commission by the good offices of a lady, who was his relation, and before that, he had no business nor profession.

Thus did the testimony of this witness, who alone attempted to bring the publication home to the traverser, appear extremely suspicious, even upon his own examination. It will appear upon your Lordship's notes, that a gentleman from the same neighbourhood, was afterwards asked: Is such a person to be credited upon his oath? He answered, it was a very hard matter to say; but made use of the words, "I might hesitate." Another was examined. What did he say? "It is a very hard question—I know but little more than what happened on the trial, where he was examined. I would, for my own part, give him very little credit." But being pressed again, he said he did not think himself warranted to say, he was not to be credited, from any particular knowledge of his own. A very respectable witness, of the other sex, was then called, who said she would not credit him upon his oath. She was cross-examined in a manner which plainly showed that the conductors of the prosecution were aware that the character and credit of the witness was to be impeached, and by whom it was to be impeached, and yet have been able to bring forward nothing to support it. This lady was asked, if there was any particular infidelity which she had to complain of in the witness? She answered, that he had a brother who was married to her daughter, whom he had endeavoured to seduce from his wife. This, however, not proving sufficient at the trial to discredit the witness, I trust we shall now be allowed to bring forward the new matter, which has since come to our knowledge, in corroboration, explanation, and illustration of what passed there.

The hair-dresser charges the witness with direct perjury. He states that he knew him, and dressed his hair for a length of time, and sued

him for the debt thereby incurred, in the Court of Conscience, where the other, on his oath, denied that he had ever seen him, or that he ever knew his name, although the hair-dresser swears to a conversation that passed between them that day on Essex-bridge; there has been time to answer that affidavit, it remains, however, uncontradicted; therefore I am entitled to take it as true, and it ought to have as much weight as that of the most dignified person in the state. It is the same thing as if this witness had been called upon the table, and gone down without cross-examination, and then where would have been the evidence to support the publication?

There is also another witness who tells a story about a horse cause, when Lyster made an affidavit, and therein perjured himself, by personating and swearing in the name of his brother.

It is true, at the trial, the jury would have been judges of the credit of the witnesses, but your lordships would not have passed over the testimony of these two men, and if you had then stated, that there was not a single witness but himself, to give any legal proof of publication, it is for your lordships to judge, whether the jury would have found the verdict they did; and it is enough for me, if I can even raise a doubt, to use Lord Mansfield's words, in *Bright v. Enyon*, whether justice has been done.

But it does not stand upon the ground alone of the impeachment of the witness; there are two other affidavits impeaching the conduct of one of the jurors. Perhaps it may be argued from public convenience, that when the party has not been fortunate enough to find evidence of this kind before the trial, upon which to challenge the array or the particular jurors, it is better that the individual should abide his misfortune, than that confusion and irregularity should be introduced into the jurisprudence of the country; but I trust your lordships will make that consideration bend to the greater question—has justice been done?

What is judicial discretion? It is the sound application of judicial knowledge and good judgment to the peculiar circumstances of each individual case; it is the investigation of every minute circumstance in a proceeding, to which sound sense and liberal understanding can be applied.

But you have also the affidavits of that respectable man, of whom the voice of the kingdom of Ireland will say, that he would not sully his unspotted honor by using any unworthy artifice for the purpose of evading any punishment however great.

This alone ought not to shake the verdict; but will any man attempt to say, that an affidavit of that kind, which has been admitted, and has been read, and must obtain the belief of every man in and out of court, will not have some weight to induce your lordships to suspect that justice has not been done.

Mr. FLETCHER then recapitulated the four grounds of the motion.

1st. New evidence not discovered till after the trial.

2d. New evidence to impeach that witness without whom (had he been out of the way) there could have been no verdict of conviction.

3d. Evidence to impeach the jury.

* See Thompson's Case as to "Judicial Discretion;" 8 Howell's, St., Tr., p. 56.

4th. The evidence of the traverser as well to the witnesses as the sheriff.

And concluded, that it would be more becoming the officers of the crown to say—we will not have such a verdict as this to go abroad and be scrutinised in every country, where the English language is read. If we cannot have a conviction consistent with justice and with decency, we will have none.

Mr. RECORDER, on the same side, followed Mr. Fletcher, putting the same arguments in a striking and varied point of view ; he observed, that by setting aside this verdict and sending the cause back again to receive a solemn, serious, and deliberate investigation, from a fair jury of the country, returned by a returning officer whom the traverser has no reason to distrust, there could not follow the smallest mischief, and then, if upon fair evidence laid before the court on one side and the other, he should happen to be convicted, that conviction would have the effect which was intended ; but if this verdict was to stand after the evidence which had appeared upon the trial, and after the lights which had been thrown upon it since, there is not a person present in the court, and believing that testimony false, that would not feel sorrow, to see the judgment of a court of justice so founded.

If this gentleman had been indicted in the ordinary way, for a misdemeanor, he would have had an opportunity of knowing the party prosecuting, and the specific charge made against him. But when an information is filed *ex officio*, it is the practice of the officers of the crown to keep the information they receive in their pocket for their own justification, and the defendant is not authorised to call upon the crown for a copy of the examinations sworn.

Lord CLONMEL, Chief-Justice.—When this was mentioned before, it occurred to me that there had been an examination sworn before a magistrate, and he was not prevented from applying for it.

Here Mr. ROWAN appealed to Mr. Justice Downes, whether he had not, when before him, requested to know who the perjured villain was that could have sworn against him, and whether, for that purpose, he had not been inclined to refuse the offer of bail, choosing rather to go to prison, that he might know his accuser and prosecute him, (for he had been refused a copy of the examinations) and said, that had he gone to gaol then, as he was inclined, he would have been, without doubt, acquitted, when the former sheriffs were in office, and when there was not the same selection of jurors.

DOWNES, Justice.—Admitted that the defendant had stated nothing but what passed, and that he had got no information from him respecting the prosecutor.

Mr. RECORDER.—The person prosecuted, *ex officio*, knows nothing more than what appears upon the information filed, which gives him not the smallest intimation of the witness who is to prosecute him.

He then made some pointed observations upon the testimony of Lyster, who swore that there were one or two hundred people walking up and down, having no seats ; and yet in the midst of so much confusion, he was able, from a distant gallery, to distinguish that gentleman's voice, which did not appear very loud, nor very shrill, nor very remarkably articulate, in reading a paper which he presumes to swear was the very paper which is the subject of this

prosecution; nor could he remember whether he had been examined some time within three years, upon so important a question as a forgery imputed by one of his brothers to another, and in which he was himself involved.

But even if he could be supposed an honest man, his testimony was bad, as, to say the best, his memory and apprehensions must have been very defective.

If those circumstances of discredit had not appeared upon the trial it might have been improper to admit them now; but in the present situation of things, it would be a favour to the witness, if he thinks he has been slandered, to give him an opportunity of shewing, upon a new trial, that he is not perjured; and as it was said to be an easy matter for the defendant to bring a third person out of this crowded and promiscuous assembly to contradict him, so it cannot be difficult for him to bring some individual out of a private gallery to support him.

The evidence of Morton was most palpably false, for he swore that his uncle Giffard, to his belief, had not any thing to say to the conduct of the Dublin Journal, nor could he say anything of the relationship that subsisted between his cousin Ryan and the sheriff, who was their common uncle.

And he concluded by observing, respecting the traverser, that at all events it would not convict him in the opinion of unprejudiced and moderate men, to have gone further in such circumstances than moderate man would go; that the traverser, whose affidavit scarcely any man in the community would doubt, had sworn that the evidence of Lyster was false, and that the jury were prejudiced, and returned by a person adverse and hostile to him; and that the public could not but feel horror at a sentence pronounced upon such a foundation.

He protested solemnly, that feeling for the dignity and character of the administration of justice in this country, he was more interested in the event of the present motion, than in that of any other in which he was ever concerned. The King had not in his dominions a subject more warmly attached to the constitution in church and state than he; but he was, at the same time, a friend to the civil and religious liberties of the people. The man who goes too far in doing what he thinks may tend to secure these, may be censured by moderate men, but he will not, therefore, cease to be esteemed by moderate men. Mr. Rowan may, perhaps, in some instances, have gone too far on this subject; but his conduct has always been known to originate in the best and purest motives, and there was not in society a man more respected, nay, admired, than he. It was, therefore, essential in the highest degree, that a verdict, by which such a man was subjected to public and exemplary punishment, should be above all exception.

Mr. CURRAN, on the same side.—It was an early idea, that a verdict in a criminal case could not be set aside, *inconsulto rege*, but the law had stood otherwise without a doubt, to impeach its principle for the last two reigns.

Common sense would say, that the discretion of the court should go at least as far in criminal as in civil cases, and very often to go no further would be to stop far short of what was right, as in those great

questions where the prosecution may be considered either as an attempt to extinguish liberty, or as a necessary measure for the purpose of repressing the virulence of public licentiousness and dangerous faction ; where there can be no alternative between guilt or martyrdom, where the party prosecuted must either be considered as a culprit sinking beneath the punishment of his own crimes, or a victim sacrificed to the vices of others. But when it clearly appears that the party has fallen a prey to a persecuting combination, there remains but one melancholy question, how far did that combination reach ?

There have been two cases lately decided in this very court, the *King v. Pentland*, where the motion was made and refused, and the *King v. Bowen*, where it was granted ; both of which shew, that captious sophistry, and technical pedantry, had here, as well as in England, given way to liberal and rational inquiry ; and that the court would not now, in their discretion, refuse a motion of this kind, unless they could, at the same time, lay their hands upon their hearts, and say, they believed in their consciences that justice had been done ; such was the manly language of one of their lordships (Mr. Justice Downes) ; and such the opinion of the court on a former occasion.

He then cited 7 Modern 57. as referred to in Bacon tit. Trial, to shew that where there was good ground of challenge to a juror, not known at the trial, it was sufficient cause for setting aside the verdict.

In England they have a particular act of parliament, entitling the party to strike a special jury to try the fact, and then he has time between the striking and the trial, to question the propriety of that jury ; here my client had no previous information till the instant of trial, who his jurors are to be.

There are certain indulgences granted at times, perhaps by the connivance of humanity, which men, who are not entitled to demand them in an open court, obtain nevertheless by sidelong means, and perhaps the little breach which affords that light to the mind of the man accused, is a circumstance which the court would feel pain, even if called upon, to say, should in all cases be prevented ; but to overturn principles and authorities, for the purpose of oppressing the subject, is what this court will never do.

The first of the affidavits I shall consider, is that of the traverser. I do not recollect whether it states the sheriff, in avowed terms, to be an emissary or a hireling agent of the Castle, therefore do not state it from the affidavit ; but he swears, that he does believe that he did labour to bring into the box a jury full of prejudices, and of the blackest impressions ; instead of having, as they ought, fair and impartial minds, and souls like white paper.

This sheriff now stands in court, he might have denied it if he would ; he had an opportunity of answering it ; but he has left it an undenied assertion—he was not certainly obliged to answer it, for no man is bound to convict himself. But there is a part of that charge which amounts, at least, to this, “ Your heart was poisoned against me, and you collected those to be my judges, who, if they could not be under the dominion of bad dispositions, might be at least the dupes of good.” The most favourable thing that can be said is this, “ you sought to bring against me honest prejudices, but you brought against me

wicked ones." The very general charge, that he sought for persons, who he knew were most likely to bring prejudices with them into the jury box, is a part of the affidavit, that it was incumbent on him to answer if he could.

I do not contend, that what is charged in the affidavit, would have been a ground of principal challenge to the array; but hold it to be the better opinion, that a challenge to the array for favour, does well lie in the mouth of the defendant.

The ancient notion was, you shall not challenge the array for favour where the king is a party; the king only can challenge for favour, for the principle was, that every man ought to be favourable to the crown, but thank God, the advancement of legal knowledge and the growing understanding of the age, has dissipated such illiberal and mischievous conceptions.

But I am putting too much stress upon such technical, discarded, and antiquated scruples. The true question has been already stated from the authority of Mr. Justice Downes, and the question is, Has justice been done?

It is a matter, upon which scarce any understanding would condescend to hesitate, whether a man had been fairly tried, whose triors had been collected together by an avowed enemy, whose conduct had been such, as to leave no doubt that he had purposely brought prejudiced men into the box.

In every country, where freedom obtains, there must subsist parties. In this country and in Great Britain, I trust there never will be a time, when there shall not be men found zealous for the actual government of the day. So, on the other hand, I trust, there will never be a time, when there will not be found men zealous and enthusiastic in the cause of popular freedom and of the public rights. If, therefore, a person in public office suffers his own prejudices, however honestly anxious he may be for a prosecution carried on by those to whom he is attached, to influence him so far as to choose men to his knowledge, devoted to the principles he espouses, it is an error which a high court of judicature, seeking to do right and justice, will not fail to correct.

A sheriff, in such a case, might not have perceived the partiality of his conduct, because he was surveying it through the medium of prejudice and habitual corruption. But it is impossible to think that this sheriff meant to be impartial, it is an interpretation more favourable than his conduct will allow of; if he deserves any credit at all, it is in not answering the charge made against him: At the same time, that, by not answering it, he has left unimpeached the credit of the charge itself.

[Here the sheriff tendered some form of an affidavit, which the court refused to have sworn or read, for the same reason that those, sworn and tendered by the defendant's counsel, had been before refused. Mr. Curran, however, consented to its being sworn and read; but the Attorney-General declined it, being unacquainted with the contents, and uninstructed as to its tendency; it therefore was not sworn.]

Mr. CURRAN—Is this then the way to meet a fair application to the court, to see whether justice has been done between the subject and

the crown. I offer it again, let the affidavit be read. And let me remind the court, that the great reason for sending a cause back to a jury, is, that new light may be shed upon it; and how must your lordships feel, when you see that indulgence granted to the conscience of the jury, denied to the court?

MR. ATTORNEY-GENERAL.—I am concerned that any lawyer should make a proposition in the manner Mr. Curran has done; he proposes to have an affidavit read, provided we consent that others, which the court have already refused, should be now read.* I did not hear it offered; but is it to be presumed I will consent to have an affidavit read, about which I know nothing? Yesterday, without any communication with a human being, I did say, that I conceived it unnecessary to answer any of the affidavits, thinking that they were not sufficient to ground the application made to the court. And it is presumed I am so mad as to consent to the reading of affidavits, which I have not seen?

[Here some altercation took place, and Lord Clonmel, Chief-Justice, interposed, saying, that the counsel had certainly a right to argue it upon the ground, that the sheriff was biassed, and did return a jury prejudiced against the traverser.]

MR. CURRAN was then proceeding to observe upon the expression of one of the jury, sworn to in another affidavit, "That there would be no safety in the country, until the defendant was either hanged or banished." When it was asked by the court, whether the time of its coming to the knowledge of the traverser, that the sheriff was biassed, was stated in his affidavit?

MR. CURRAN answered, he was in prison, and could not have the attendance of those counsel, whose assistance he had in court, and besides, from the nature of the circumstances, it was impossible he could have been sufficiently apprised of its consequences, for he saw not that pannel till the day of the trial, when he could not have had time to make any inquiry into the characters, dispositions, or connections of the jury. Mr. Curran then reverted to his argument on the expression of the juror.

If triors had been appointed to determine the issue, favourable or not, what would have been their finding? Could they say upon their oaths, that he was not unfavourable to that party, against whom he could make such a declaration?

Favour is not cause of principal challenge, which if put upon a pleading, would conclude the party. Favour is that which makes the man, in vulgar parlance, unfit to try the question. And as to the time these facts came to his knowledge, he has sworn that he was utterly ignorant of them at the time of his coming into court to take his trial.

I will not glance at the character of any absent noble person, high in office, but let it be remembered, that it is a government prosecution, and that the witness has, from a low and handicap situation, scraped himself into preferment, perhaps, for I will put the best con-

* It may not be improper to observe, that Mr. Attorney-General mistook Mr. Curran's proposal, which was an unqualified offer to have Mr. Giffard's affidavit read.

struction upon it, by offering himself as a man honestly anxious for the welfare of his country ; in short, it is too obvious to require any comment, what the nature of the whole transaction has been, that he had got his commission as a compensation, *pro labore impendendo*, and came afterwards into court to pay down the stipulated purchase.

Had this then been an unbiassed jury, was there not something in all these circumstances, that might have afforded more deliberation, than that of one minute per man, for only so long was the jury out ; and had this been a fair witness, would he have lain down under a charge, which if true, ought not only to damn this verdict, but his character for ever ? What would a corps of brother officers think of a person charged, upon oath, with the commission of two wilful perjuries, and that charge remaining undenied ? Here is an undenied charge, in point of fact, and although I do not call upon the court to say, that this is a guilty and abominable person, yet surely the suspicion is strongly so, and must be considered. This was at least a verdict, where the evidence went to the jury under slighter blemishes than it will if my client has the advantage of another trial, for then he will put out of the power of man to doubt that this witness has been perjured. This witness, who has had notice, both here and at the trial, of the aspersions on his character, yet has not called a human being to say that he entertained a contrary opinion of him.

Was he known any where ? Did he crawl unobserved to the castle ? Was it without the aid or knowledge of any body, that that gaudy plumage grew on him, in which he appeared in court ? If he was known for any thing else than what he is stated to be, it was, upon that day, almost a physical impossibility, in a court-house, which almost contained the country, not to have found some person, to give some sort of testimony respecting his general character. For though no man is bound to be ready at all times to answer particular charges, yet every man is supposed to come with his public attestation of common and general probity. But he has left that character, upon the merits of which my client is convicted, unsupported, even by his own poor corporal swearing. You are called upon, then, to say, whether upon the evidence of a being of this kind, such a man as that is to be convicted, and sentenced to punishment, in a country where humanity is the leading feature, even of the criminal law.

He then observed upon the second witness.—A man coming to support the credit of another collaterally, is himself particularly pledged ; then what was his testimony ? He did not know whether Mr. Giffard was concerned in the newspaper ! And now you have the silence of Giffard himself, in not answering Mr. Rowan's affidavit to contradict that. And next, he did not know whether his own cousin-german was the relation of their common uncle ! I call upon you, my lords, in the name of sacred justice, and your country, to declare whether the melancholy scenes and murderous plots of the Meal-tub and the Rye-house, are to be acted over again. And whether every Titus Oates that can be found, is to be called into your courts, as the common vouchee of base and perjured accusation.

He then proceeded to another ground, namely, that the direction of the court was not, as he conceived, agreeable to the law of Ireland.

The defence of my client (he added) was rested upon this, that there was no evidence of the fact of publication, upon the incredibility of the fact, and the circumstances of discredit in the character of the witness; yet the court made this observation: "gentlemen, it scarcely lies in the mouth of Mr. Rowan to build a defence upon objections of this kind to the characters of witnesses, because the fact was public; there were many there; the room was crowded below; the gallery was crowded above; and the publicity of the fact enabled him to produce a number of witnesses to falsify the assertion of the prosecutor, if in fact it could be falsified!" Is that the principle of the criminal law? Is it a part of the British law that the fate of the accused shall abide, not the positive establishment of guilt by the prosecutor, but the negative proof of innocence by himself? Why has it been said in foolish old books, that the law supposes the innocence of every man till the contrary is proved? How has it happened that that language has been admired for its humanity, and not laughed at for its absurdity, in which the prayers of the court are addressed to Heaven for the safe deliverance of the man accused? How comes it that so much public time is wasted in going into evidence of guilt, if the bare accusation of a man did call upon him to go into evidence of his innocence? The force of the observation is this, Mr. Rowan impeaches the credit of a witness, who has sworn that he saw him present, and doing certain acts at a certain meeting; but it is asked has he substantiated that discredit, by calling all the persons, who were present, to prove his absence from that meeting, which is only stated to have existed, by a witness whom he alleges to have perjured himself. I call upon the example of judicial character; upon the faith of that high office, which is never so dignified as when it sees its errors and corrects them, to say, that the court was for a moment led away, so as to argue from the most seductive of all sophisms, that of the *petitio principii*.

See what meaning is to be gathered from such words; we say the whole that this man has sworn is a consummate lie; shew it to be so, says the court, by admitting a part of it to be true. It is a false swearing; it is a conspiracy of two witnesses against this defendant; well then it lies upon him to rebut their testimony, by proving a great deal of it to be true! Is conjecture then, in criminal cases, to stand in the place of truth and demonstration? Why were not some of those (I will strip the case of the honour of names which I respect)—but why were not some of those, who knew that these two persons were to be brought forward and that there were to be objections to their credit—if, as it is stated, it happened in the presence of a public crowd, rushing in from motives of curiosity, why were not numbers called on to establish that fact? On the contrary, the court have said to this effect: Mr. Rowan, you say you were not there; produce any of those persons with whom you were there, to swear you were not there! You say it was a perjury; if so, produce the people that he has perjured himself in swearing to have been there! But as to your own being there you can easily shew the contrary of that, by producing some man that saw you there! You say you were not there? Yes. There were one hundred and fifty persons there; now produce any one of those to swear they saw you there!

It is impossible for the human mind to suppose a case, in which infatuation must have prevailed in a more progressive degree, than when a jury are thus, in fact, directed to receive no refutation, nor proof of the perjury of the witness, but only of his truth. We will permit you to deny the charge by establishing the fact: we will permit you to prove that they swore falsely to your being there, by producing another witness to prove to a certainty that you were there.

Lord CLONMEL Chief-Justice.—The reasoning of the court was strong upon that point; this is a transaction stated by the witness to have happened in open day, in a crowded assembly in the capital, amidst a number of persons dressed in the uniform of Hamilton Rowan. There has been nothing suddenly brought forward to surprise the traverser; yet what has he done, did he offer as in the common course to prove an alibi? It is stated to be at such a day; the witness swears at such an hour—the place is sworn to have been full of people, of Mr. Rowan's friends: but if there was even a partial assembly, it would be easy still to produce some one of those persons who were present to say, that the fact did not happen which has been sworn to, or if you say Mr. Rowan was not there, it is easier still to prove it by shewing where he was; as thus: I breakfasted with him, I dined with him, I supped with him, he was with me, he was not at Pardon's; disprove that assertion by proving an affirmation inconsistent with it.

Mr. CURRAN.—I beg leave to remind the court of what fell from it. "He may call" (said the court) "any of those persons, he has not produced one of them;" upon this, I think, a most material point does hang. "He might have called them, for they were all of his own party."

Lord CLONMEL.—That is, if there were such persons there; or if there was no meeting at all he might have proved that.

Mr. CURRAN.—There was no such idea put to the jury, as whether there was a meeting or not: it was said they were all of his party, he might have produced them, and the non-production of them was a "volume of evidence" upon that point. No refinement can avoid this conclusion, that even as your lordship now states the charge, the fate of the man must depend upon proving the negative.

Until the credit of the witness was established he could not be called upon to bring any contrary evidence. What does the duty of every counsel dictate to him; if the case is not made out by his adversary or prosecutor? Let it rest; the court is bound to tell the jury so, and the jury are bound to find him not guilty. It is a most unshaken maxim, that *nemo tenetur prodere se ipsum*. And it would indeed be a very inquisitorial exercise of power, to call upon a man to run the risque of confirming the charge, under the penalty of being convicted by *nil dicit*. Surely at the criminal side of this court, as yet, there has been no such judgment pronounced. It is only when the party stands mute of malice, that such extremes can be resorted to. I never before heard an intimation from any judge to a jury, that bad evidence liable to any and every exception ought to receive a sanction from the silence of the party. The substance of the charge was neither more nor less than this; that the falsehood of the evidence shall receive

support and credit from the silence of the man accused. With anxiety for the honour and religion of the law, I demand it of you, must not the jury have understood that this silence was evidence to go to them; is the meaning contained in the expression "a volume of evidence," only insinuation! I do not know where any man would be false. I do not know what any man could do to screen himself from persecution; I know not how he could be sure, even when he was at his prayers before the throne of Heaven, that he was not passing that moment of his life, on which he was to be charged with the commission of some crime, to be expiated to society by the forfeiture of his liberty or of his life. I do not know what shall become of the subject, if a jury are to be told that the silence of the man charged is a "volume of evidence," that he is guilty of the crime; where is it written? I know there is a place where vulgar frenzy cries out, that the public instrument must be drenched in blood; where defence is gagged, and the devoted wretch must perish. But even there the victim of such tyranny is not made to fill, by voluntary silence, the defects of his accusation, for his tongue is tied, and therefore no advantage is taken of him by construction; it cannot be there said that his not speaking is a volume of evidence to prove his guilt.

But to avoid all misunderstanding, see what is the force of my objection; is it that the charge of the court cannot receive a practicable interpretation, that may not terrify men's minds with ideas such as I have presented? No—I am saying no such thing, I have lived too long and observed too much not to know, that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet, will alter the progress or direction of its motion. I am not arguing that the charge of the court cannot by any possibility be reconciled to the principles of law; I am agitating a greater question; I am putting it to the conscience of the court, whether a jury may not have probably collected the same meaning from it, which I have affixed to it, and whether there ought not to have been a volume of explanation, to do away the fatal consequences of such mistake.

On what sort of a case am I now speaking? on one of that kind, which it is known has been beating the public heart for many months; which, from a single being in society, has scarcely received a cool or tranquil examination. I am making that sort of application, which the expansion of liberal reason and the decay of technical bigotry have made a favoured application.

In earlier times it might have been thought sacrilege to have meddled with a verdict once pronounced; since that the true principles of justice have been better understood; so that now, the whole wisdom of the whole court will have an opportunity of looking over that verdict, and setting right the mistake which has occasioned it.

Mr. Curran made other observations, either to corroborate his own, or to answer the opposite counsel; of which it is impossible to give an exact detail; and concluded thus: You are standing on the scanty isthmus that divides the great ocean of duration; on one side of the past, on the other of the future; a ground, that while you yet hear me, is washed from beneath our feet. Let me remind you, my lord,

while your determination is yet in your power, *dum versatur adhuc intra penetralia Vestæ*, that on that ocean of future you must set your judgment afloat. And future ages will assume the same authority, which you have assumed; posterity feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Russel or a Sidney.

[The conclusion of Mr. Curran's speech was marked by another burst of applause, similar to those which accompanied his former exertions in this cause.]

WEDNESDAY, February 5, 1794.

MR. ATTORNEY-GENERAL, for the crown.—My Lords, it is my business to offer such arguments as occur to me, to resist what has been advanced in favour of Mr. Rowan, upon this motion to set aside the verdict and grant a new trial. It is to me, my lords, a great happiness, that it has arrived at this stage, when the subject will be examined by the rules of legal reasoning, without an appeal to the passions of men, or any attempt to influence the argument by topics deduced from extrinsic matter. I should be sorry when I return to my own house, that passion should so far make me forget my reason. It is the duty of every man, whether prosecutor or advocate for the prosecuted, to promote the ends of justice, and obtain decisions upon argument, and argument alone. It is not the duty of counsel to determine the weight of argument; they are to offer the best arguments they can; when they pass that, they pass the bounds of duty.

This, my lords, is said to be a verdict against evidence, because the credit of the principal witness was such, as that he deserved no credit, and that now, if the verdict be set aside, new evidence will be offered, since come to the knowledge of the party, further to shew that the witness did not deserve credit. Another ground is this, that the sheriff, who returned the jury, had a prejudice against the accused, and laboured to procure a pannel prejudicial against Mr. Rowan. Another ground is, that one of the jurors had expressed himself in a certain way, shewing he had an ill opinion of Mr. Rowan upon some subject or other. Such, my lords, are the grounds specified in the notice. A further objection was made from the bar, of which no notice was given, namely, that one of the judges had misdirected the jury. If there be any weight in it, the party by strict form can derive no advantage from it—but I do not confine myself to form; it is my desire that this matter should be fairly inquired into according to the rules of law; therefore I will observe upon that, and make such answer to it as occurs to me, first calling upon your lordships and the gentlemen in this court, for beyond that I desire no attention, to give me an impartial hearing. I appeal to those only who have knowledge of law and the rules of cool reason; the rest is matter of indifference. My lords, this information was filed a year since against Mr. Rowan; he was arrested upon a previous information which was returned to the Crown-office in Hilary Term, 1793, a *noli prosequi* was entered upon that, by reason of a mistake in copying one of the words, so that if brought to trial, he must have

been acquitted without entering into the merits. Another information was filed; that was pleaded to, and immediately an application was made to have him tried in Michaelmas Term. The court conceived that, consistent with the discharge of general duty, it was impossible to have him tried then, and this term was appointed. The pannel was returned to the office in the usual manner; I have a right to say so, because there is no suggestion to the contrary; and it was open to any man who pleased to look at it. On Wednesday se'nnight the record came to be tried. The jury were called at ten o'clock; they were called a second time, a third time, and a fourth time; and it was not till near twelve o'clock that the jury were sworn. All that time there was no challenge taken to the array. No application was previously made, no suggestion filed to have the *venire* directed to any other officer than the gentleman who returned the pannel. But when the jurors were called to the book, several were challenged and a pretty general question was put to several, I do not say to all of them, to declare whether they had delivered any opinion upon the case. To that question I beg attention from every impartial man—they were permitted to give answers, though I rely upon it, that by law, in a criminal case, the party had no right to put such a question. So that after an hour and half's deliberation, the party knowing who were to be called, such as were thought proper to be questioned, were examined and permitted to answer. But the fairness with which this prosecution was intended to be conducted is manifested by another circumstance. A juror of the name of Dickson was actually sworn, and afterwards he said he had given an opinion—it was desired that he might be discharged. I instantly gave my consent. Mr. Curran desired not my consent, but that I should move it myself; I did move it, because I thought it was right to have him discharged. The jury were then sworn and the merits were gone into. Two witnesses were produced, one swearing to the actual fact of publishing the very paper in the record; another, who though he did not swear to the very paper, yet did give such evidence as, if he was worthy of credit, must give every reasonable man conviction, that it was the very same libel. Three witnesses were produced and examined to the credit of Lyster, the witness for the crown; one did not say he was unworthy of credit, but that he would hesitate; another was not much inclined to give him belief; and it is insisted that such evidence was direct and positive to take away his credit, and therefore your lordships should set aside this verdict. The cross-examination by the counsel for Mr. Rowan throughout, directly and in terms, admitted that there was a meeting that day at Cope-street, that Mr. Rowan was there, and that the Volunteers were there assembled; the whole cross-examination went to that fact; the dress and uniform of the old Volunteers, every fact was insisted upon, and it was not until yesterday, in a kind of joke, that the contrary was insisted upon. Mr. Rowan's affidavit does not deny the meeting. Away, therefore, with the childish observation, that a man could not be called from a meeting which did not appear to exist.

I will now come to the merits of the case upon the objections made. There was nothing omitted which could be said for Mr. Rowan: it is not fit for me to say that anything was said which ought not to

have been said. But, my lords, something was said with regard to the right of courts to set aside verdicts in criminal cases, not capital : no man disputed the right, or questioned it. Mr. Curran went into the history of that branch of the law and the doctrine of setting aside verdicts *rege inconsulto* ; how it was with regard to ancient times, I am not satisfied ; but sure I am, and so I hope it will remain, that this court will have a right in favour of the defendant, and in his favour only, to set aside a verdict against him. But the exercise of that great power, touching the trial by jury, must be applied according to the known rules of law. Mr. Curran stated that an exact instance was not to be found in the books, and from the hurry, I suppose, in which he had considered the subject, he fell into the observation that the practice is of so modern a date that many precedents could not be found : he confined it to the two last reigns ; but, my lords, the reports in William III's time are full of such applications ; the practice prevailed in the reign of Charles II. how much earlier I cannot say—there are an infinity of cases upon the subject, and he was right when he said there was no such case as this ; and before your lordships make a precedent of this, I am sure you will give it all the attention it deserves. I repeat the observation, that the consequence of this determination to the public and the administration of criminal justice, is of the last importance ; and that, however right it is, that Mr. Rowan should seek redress by these means, and that every possible exertion should be made in favour of a man standing a culprit at your bar ; yet, my lords, the consideration of that man, or any other, let him be who he may, dwindles to a thing of no value, when compared to the general justice of the country. There can be no distinction here ; and here alone there is equality among subjects, between the highest man in the state, and the men who shout in the hall at the names of Titus Oates* and Algernon Sidney.† The case, my lords, comes then to this, whether upon the affidavits which have been made you should set aside this verdict ? They say these affidavits are to be taken as true—I say they are not : they were made and produced in court in my absence. I was called—I knew no more of them than the man in Westminster-hall. I heard them read, and it did strike me, that they were of such a nature, that I ought not to give an answer to them ; I therefore did not consent to a Rule unless cause, but was ready to meet the counsel at the moment. It is to be taken as true that such affidavits are made ; that Mr. Rowan can find two witnesses swearing to those facts which have been mentioned ; but it cannot be taken as true that those alleged facts are true ; it is not for your lordships to say they are true or false ; nor if witnesses were found to say that what has been stated respecting Perrin was false, could you determine that ? but whether you send it back to see whether a jury would give them credit or not, that is what you are to determine ; you are to send it back to let in the same species of evidence which has been already adduced without success. As to Mr. Rowan's affidavit, he swears to something he heard, and something

* See Oates's Trial ; 10th Howell's St. Tr. ; and the trials connected with the Popish Plots, 6 and 7 Howell's St. Tr.

† Sidney's Case, 9 Howell's St. Tr. p. 817.

he believes—that must be taken as true; that is, that he heard something and that he believes it—if that were a ground for a new trial, verdict may be had after verdict. Something has been spread abroad, that your minds might be influenced by something without doors—a thing impossible. Let the cry be what it may by the seditious and the turbulent, the whole will be thought of rightly on a future day. What has been said cannot influence you, who will determine according to the rules of law. It is desired that you will set aside this verdict, that evidence may be given to show Lyster is not worthy of your credit. Gentlemen have argued this case, certainly of the first talents and ingenuity, some of them have had as much experience in these matters as any gentleman who has the honour of wearing a bar gown; but I must say some little things fell from them, which were rather extraordinary; one gentleman said he had only got his brief the night before; another said he had got his on his way to court; but they knew the affidavits were to be made, they heard them read the day before; something was said of a case which had M. S. opposite to it in the margin. I believe there are not many gentlemen who could recollect cases in the books cited as from manuscript cases, and quote them as such from memory. I have used great diligence upon the subject, and agree with Mr. Curran, there is not one to be found. You are desired to set aside the verdict, because the witness was not to be credited. Who made you judges of that? Are you the guardians of the lives, the liberties and the properties of the people? Which of you determines the credit of the witnesses? I have sat at my lamp the most of the night and have found nothing like this. But I will, for a moment, suppose what I do not admit, that it might be a ground for setting aside the verdict: bring it to the test of reason, bring it to the bar of sense where it should be tried. You are to set aside a verdict, to let in evidence to the credit of a witness, when his credit was impeached; witnesses were examined to his credit, and so strong say they was the evidence against him, that it ought to have destroyed his credit. The case was made, witnesses were examined, and the whole was left to the jury. For, my lords, it is a sad mistake which has been sent abroad, that because one witness says another is not to be believed, that therefore, what the first says is true. Are the jury to give up all the circumstances? Their own observation to the opinion of another man perhaps as much prejudiced as any? But here the matter was examined; they were prepared with evidence to the history of this man's life, and after a verdict is had upon that, some men are picked up in the streets to give some evidence, that is, that they do not believe the witness, to eke out a ground for setting aside the verdict, in a case where the objection has been already made and already tried. Here incidentally let me observe upon another part of the case. The verdict is against evidence, because the witnesses were not to be believed: there is no man so young at the bar as not to see the futility of such an argument: a man may have discredited himself upon various occasions, and yet may give such testimony, accompanied with other circumstances, as shall entitle him to belief, though

a thousand should oppose him.* “My Good Lord Primate of Armagh do you know Mr. Lyster?” “I do, I have known him concerned in many transactions of a base nature, he is not to be believed.” What? if that was sworn to by that saint upon earth, shall the positive swearing discredit the testimony though it be accompanied with circumstances which speak its truth? Can that be law? I hope not, for it is not reason. There are cases which say a verdict shall not be set aside, though an incompetent witness has been examined, who was not known to be incompetent at the time. That is a stronger case than the present, and applies to the ground of objection with respect to the jury. *Turner v. Pearte*, 1 Durnf. and East., 717. *Wright v. Littler*, 3 Bur. 1244.† Here I must trespass upon your lordships time to take notice of another observation. It is insisted that you ought the rather to let him in, because this was an information filed *ex officio* by the Attorney-General, by which he was deprived of an opportunity of knowing the witness against him, and consequently that though in ordinary cases a new trial ought not to be granted upon that ground, yet here it ought. The gentleman who made this observation, was here again a little hurried, for if he had reflected one moment, he would see that the cases are precisely the same. The party in an indictment has no right to see the examinations till trial, and sometimes not even then. In an information he has no right to see them. So that whether it be an information or an indictment, he is alike forbid to see the examination. If he be prosecuted by indictment, the examination will be returned to the crown-office. If by information, the examinations are put into the same crown-office on the first day of the term. It was said that in the case of an indictment, what was sworn could be known. All that could appear would be that some of the grand jury might forget their oaths and disclose the secrets of the prosecution, though they are especially sworn not to mention what appears upon the examinations.‡ This observation was made without thought, therefore, and could not have been made for any good purpose with respect to this motion; it was made for nothing but to impress the people with an idea that there has been severity or oppression in this case, not allowable, and that the subject has been put under difficulties, not occurring in the ordinary course of justice. But upon a cool enquiry it will be found that the manner of proceeding makes no difference in the case. If there be any way by which the informations in the crown-office can be got at (I hope there is not) he might have made use of that; but Mr. Rowan was apprised;

* As to what shall be deemed sufficient to derogate from the credit of a witness, See *Oates Trial*, Howell 10, p. 1185; *Canning's Case*, Howell 19, pages 454 and 609; *Murphy's Case*, Howell 19, p. 719; and the case of *Catherine Nairn* and *Patrick Ogilvie*, Howell 19, p. 1268.

† *Lister v. Mundell*, 1 Bos and Pull, 429. In this case the court said that “though unusual to grant a new trial on evidence contradicting the testimony on which the verdict had been obtained, discovered subsequent to the trial, yet as the very fact on which these witnesses had formed themselves were falsified by the affidavits produced, they thought it afforded sufficient ground for a new trial.”

‡ See the grand jury oath in *Shaftesbury's case*, Howell 8, 759; and the extract from *Burnet* in the note on that case; *Ibid.* 772, note; case of the *Regicides*, Howell 5, 972, note; *Raynard's case*, Howell, 14, p. 477.

he came here with witnesses to trace facts happening at various times; he put his defence on that. Mr. Lyster's name was inserted in the papers, and it was notorious for many months that he was the man. But I disclaim that, your lordships have no right to know it, but you know that Mr. Rowan came prepared with witnesses against him. Another observation occurs. I will suppose, what I never will admit till a solemn decision is had, that the objection made on account of the want of credit would be a good ground for setting aside the verdict, even after that credit had been examined to, or provided no witness was found to come forward, yet you cannot entertain this motion, for the knowledge of the existence of the evidence since the trial is not sworn to. Mr. Rowan has made an affidavit that he did not know it; that affidavit is to be taken as true—I believe he did not. But he appeared by attorney, he defended by attorney, and it is not sworn even to his belief, nor has his attorney sworn, nor is there a syllable to tell you that those concerned for him were not apprized of the fact. If these affidavits be admitted, there is nothing to be done but conceal everything from the party, to keep back that which may eventually serve the motion for a new trial, in case of any thing against him. I feel that if this were an ordinary case, the bare statement of the fact would drive the motion out of court; the fact has been enquired into by the jury; notwithstanding what has been said of the witness, he may have told the truth, and it is impossible it should be otherwise.

The other objection is that one of the jurors did not stand indifferent; a ground of challenge which was not taken, and not having been taken, the verdict shall be set aside and the party have a new trial. The statute law has directed that in treason the party shall have a copy of the pannel a certain number of days; in no other case has the party such a right, he is to take his challenge as the party comes to the book; that is the law of the land, that has been the simple law under which our ancestors lived happy for ages, by which juries have been chosen and formed, who have for ages protected everything dear to Britons and Irishmen; and now, for the first time, I will be bold to say, in any criminal or civil case, the verdict is to be set aside because there lay a challenge to a juror, not known to the party at the time of the verdict. I will suppose that there was a principal cause of challenge to this man; no instance of such a case can be produced where that was a ground for a new trial; there is no necessity to examine further into the circumstances; there is no cause of challenge now stated—What is it? There was an illumination in Dublin last August, when the juror and Atkinson fell into conversation of and concerning—What? the libel calling the citizens to arms? No such thing—But an illumination takes place for the capture of a town, they fall into a conversation about the Volunteers in general, in which the juror said, the country could not prosper unless Hamilton Rowan and Napper Tandy were hanged or transported; not a syllable respecting the matter in hand—Not one word of this matter. Would that be a cause of challenge to a juror? Most undoubtedly not—and the man who used the expression, supposing he did use it, gave no cause of challenge, and now, though the eleven others agreed in that verdict, you are to send it back to a new trial—

For what? to have two triors sworn to ascertain whether Mr. Perrin was a person to be challenged or not. The juror gave an opinion of different men upon a political subject. What man is there who has not given an opinion upon such a subject? If there be, he is cold to the interests of his country. But does it apply, that the man using such expressions is not competent to meet a question of facts upon evidence before him, though the party may be concerned in a particular measure not agreeing with his opinion. I may think the conduct of a man dangerous; I may speak of the consequences of his conduct as I think. But does it follow that such a man passing a verdict upon his oath upon the examination of witnesses to a particular fact, is therefore to be unfavourable to the person of whom he had entertained the opinion? Was there a single allusion to the matter in question? It is not a cause of challenge to a man, that he has delivered an opinion upon the very subject; he must have done it through malice and with an improper view; and the reason is, that an honest man, may deliver an opinion upon what appears before him, concerning which, when examined, he may have a different opinion; even upon the subject itself, it must be clearly shewn, that the opinion was unfair or malicious, 2 Salk. 589.* But see what is desired; suppose it a cause of challenge, suppose it a principal cause of challenge, then, my lords, I submit, that the verdict should not be set aside; because, by law the challenge must be taken, if to the array, before a juror is sworn; if to the polls, it must be as each man comes to the book.—So very strong is it, that after one juror is sworn, the law will not allow a challenge to the array; and yet where would be the difficulty? but such was the simplicity of our ancient law, that it would not allow it, Hob. 235.† And now, my lords, after the party has taken all the advantages which he could take, asking questions he had no right to ask, putting aside a juror actually sworn, after having the advantage of every thing which he could desire; you, my lords, and the people, (for they are appealed to upon a judicial trial!) have been told, that this trial was carried on by cruel and unjust means, and you are desired to set aside this verdict, upon matters, suggested in these affidavits, respecting a juror, which was no cause of challenge, upon a supposed conversation, as it seems to me, touching the Volunteers, probably over a bowl of punch, and not about the subject of any trial.

I now come to the third objection, that the sheriff has been partial: Mr. Rowan swears, as to his belief, that the sheriff has an office under government—is a militia officer, and conductor of a paper, commonly

* There is no such doctrine in Salkeld. It is presumed the reference is to Hawkins. "It hath been allowed a good cause of challenge, on the part of the prisoner, that the juror hath a claim to the forfeiture, which shall be caused by the party's attainder, or conviction; or that he hath declared his opinion beforehand that the party is guilty, or will be hanged, or the like. Yet it hath been adjudged, that if it shall appear that the juror made such declaration from his knowledge of the cause, and not of any ill will to the party, it is no cause of challenge;" 2 Hawkins 578, 8th Ed.; but see Cooke's case 13 Howell's St. Tr. p. 338.

† *Vicars v. Langham*, Hobart's R. 235, 5th Ed. The words in the report are, "And note, that in this case there were none sworn before the challenge, but only impannelled. But if the principal pannel do once appear full, then the challenge must be taken to the pannel before any be sworn, or else it comes too late."

called a government newspaper—that the sheriff is prejudiced against him—and that the pannel was returned by Mr. Giffard, or his sub-sheriff, and that he laboured to return a pannel which he either knew or believed to be prejudiced against Mr. Rowan. If the affidavit has any meaning, it means this, that there lay a challenge to the array, for that the sheriff was partial, and procured a jury for the purpose of convicting Mr. Rowan. He is not pleased to inform your lordships when he heard of these facts, or when he first formed his belief. This was not omitted from want of recollection in himself, or those who advised him; because, in his affidavit touching the evidence, he takes care to tell you, that he did not hear of it till after the trial; so that it does not appear that Mr. Rowan was not apprized of this when the jury came into the box—when the *venire* issued—when the trial at bar was moved for in Michaelmas term, or when he put in his plea—look at the situation in which your lordships stand—look at what precedent you are called upon to make—you let the man take his trial, with an objection in his possession that may set aside all the proceedings, and he declines to make it—the party is to be tried by a jury—he submits to the jury, for he made no challenge, he is found guilty, and now he says, I had a cause of challenge, I took my chance—send me to another trial, that I may make it. My lords, I would almost ask, is this decent? the law protects every man, gives him a right to have a fair jury, the law points him out the way, and he is not to overbound those limits, to do that which has not been done since the days of our Saxon ancestors. He knew these facts, that Giffard was sheriff, that he was an officer in the militia, that he had a place in the revenue—what had he to do? Mr. Rowan had able counsel, men of the first talents and information—his remedy was easy and without delay or expense—why not come in here and suggest the facts? If he had, the *venire* would have gone to the other sheriff, and Giffard could not have meddled. But mayhap the other sheriff is partial—suggest that then, and if the objection be well founded, the *venire* will go to the coroner. If the objection would not be sufficient for that purpose, it cannot be sufficient for this purpose; but it is said he was not aware of this suggestion; I will not impute it to the counsel—Mr. Rowan must have been aware of it when they came into the box—why not challenge the array? He forgot to do that, till one of them was sworn; then why not challenge for favour? Where are these men who have told him these stories? Why do they not make affidavits? Why does he take a chance for a verdict, knowing these facts? Having taken his chance, he now calls upon you to set aside the verdict upon that. Make that example, my lords, and you upset the criminal law, that which is the guardian of our lives and properties, and you make it depend upon the art, design, and knavish conduct of those concerned. The objection is founded upon the conduct of the sheriff; that conduct was known previous to the trial, therefore I rely upon it, that this verdict ought not to be set aside; and if it be, it will be an example big with dangerous consequences. It has been said, Mr. Giffard did not answer the affidavits, and therefore they must be taken as true—Mr. Rowan believes what he has sworn, but are the facts true still? No. He might have produced persons to prove the facts—Giffard has not

answered the affidavits, it was offered to let him answer; but you must put that out of the case; whether he be ready to answer them or not, I do not know, and I do not care. I at once said to the gentlemen, I meet you on your own ground—Giffard could not make an affidavit in this case, he may make one extra-judicially if he pleases.

I come now to the other objection, which they had no right to make—the misdirection of the judge: the eloquent gentleman applied it as pleasantly as any serious subject could be applied; the whole was sophistry or joke. He imputed this to one of your lordships, that the jury were to find against Mr. Rowan, because he did not shew that the facts did not happen, where so many persons were present. Your lordships best know what the observations you made were. The trial stood thus, witnesses were examined for the prosecution—witnesses were examined to discredit these, which is always matter for the jury: there was clear evidence of the guilt of Mr. Rowan, if they believed the witnesses; but witnesses were produced to discredit the first. The jury were to consider how far the opinions of those persons were to have weight, and every circumstance was to be taken into consideration. It was taken as true, that there was a meeting, that Mr. Rowan was present at the meeting, and the question was, whether he published such a paper there? If there was such a meeting, and he was there, it must occur to every person, that if he wanted to discredit the witnesses, it could be best done by shewing that he did not publish the paper. It was a judicial inquiry into a question of fact, and it was a proper observation, suggesting itself to the mind of any honest judge, to say, you are to consider, here there was a meeting; if you believe that there is not a witness produced from this number to contradict the evidence, it was a natural observation, but no direction was given to the jury; your lordships gave your opinion upon the libel, whether right or wrong is not the enquiry: there are few reasonable men, who have read or shall hereafter read that paper, who will not feel that it was the most dangerous and seditious libel, published at the time it was, that ever came from the press. But your lordships told the jury, that notwithstanding what you said, they were to form their own opinion; I do not rely upon the want of notice, but upon a full and fair discussion, let this case be decided as the law admits. One topic more remains, my lords, I should never touch upon it, if so much had not been said about it, more than ever was known to pass from the lips of counsel—I speak of Mr. Rowan's own affidavit, and the credit to be given to it. I am not to speak of the credit given to any man, it is not my province; but it is the first time I ever heard, that a man swearing to his own innocence should affect the determination of a judge in a criminal case. A great press was made upon this: we were told—I know not what—and what if I did know, I choose not to repeat—of the consequences that might attend a belief of this gentleman's affidavit: I am not apprehensive of any consequences from it: the public mind is tranquil upon subjects, and whatever tumult or noise is made by the little mob behind me, or any where else, for a few hours, or a few days, the learned and the good will see, that the case has been determined upon the known rules of law, and that justice has been

administered to this gentleman, as to every other. But the fact is not as it has been insinuated; he has not sworn to his innocence; he has not sworn, that if the verdict be set aside, he has a good cause of defence. He swears generally, that the testimony of the witnesses is not true; not a syllable with regard to his innocence. I desire to infer nothing from this; but I desire that nothing may be inferred from what he has sworn, to what he has not sworn. It is said, he is a gentleman of great worth, I know him not, I dare say he is; if he be, it may furnish some deduction, that there was something which he could not deny; I desire not to press it further, that affidavit can have no weight in the disposal of this case, and I feel sensible, that the time will come, when it can have no effect upon the people. But be their opinion what it may, be the consequence what it may—*Fiat justitia—ruat cælum.*

MR. SOLICITOR-GENERAL, same side.—My lords, I was in hopes it would not be necessary for me to address you. This is the sixth day that this subject has taken up the time of the court, it is impossible not to feel it as trespassing much upon your time. The subject has been magnified into consequences not necessarily belonging to it; you have heard this case with dignified patience and with dignified attention, with an exemplary degree of temper, not disturbed by the efforts of unbridled eloquence. It is impossible to escape your lordship's wisdom, that by the late act of parliament there was a latitude given to the jury upon the subject of libels. The learned gentleman who laboured this argument, went into an investigation of the facts very briefly. He, in an argument of three hours or more, a few days ago, scarcely took up ten minutes in the investigation of facts; he has fastened the fact of publication "round the neck of his client;" that publication was a calling to arms to introduce a reform in the representation of the people, and an emancipation of the Catholics. He said the present publication was the "honest effusion of a manly mind." Instead of disclaiming the publication, the learned counsel has made a "wreath of it to decorate the brows of his client." This motion is to set aside the verdict. In 3 Wils. 45. *Swaine v. Hall* Lord Chief Justice Wilmut said "there was a contrariety of evidence on both sides; and although I am still of opinion that the weight of evidence was with the plaintiff, yet I disclaim any power to control this verdict of the jury, who are the legal constitutional judges of the fact."

My lords, I forbear to follow the learned counsel for the defendant through the vast variety of matter which he has introduced upon the occasion of the trial, with a degree of boldness and freedom, that was very unusual to my ear, scarcely admissible in any assembly, the most popular known to the country. There was another circumstance, I beg to put to your lordship's mind; in the progress of the cross-examinations, it appeared, that at the meeting in Cope-street, there was a new species of men, under the cloak of old Volunteers, with new devices and new badges of sedition, as a harp divested of the royal crown.* It was most industriously pointed out, that they

* No such fact appeared, or was asserted, on the direct or cross-examination of any of the witnesses.

were the antient Volunteers. The witness said the men were dressed in scarlet turned up with blue, yellow, &c. Here was a declaration of the fact, that there was a meeting: give me leave to ask, was that fact capable of disproof, namely, was there a meeting of Volunteers in Cope-street? Did that fact rest on the testimony of an incredible witness? The fact happened thirteen months ago; there was full opportunity to collect materials, to disprove what was sworn to, with regard to that meeting. Was it not competent to Mr. Rowan to discredit the man if his evidence was untrue, to prove there was not a meeting on the 16th December, 1792, of Volunteers at Pardon's? That no man appeared there with side arms, or did wear those badges of sedition. Was it capable of disproof? Not one of the 150 persons have been brought to disprove the evidence of Lyster, that there was such a meeting. There is not an affidavit to prove the innocency of the party accused, that he did not publish the paper in question. My lords, is this a case in which your lordships can say, you are dissatisfied with the verdict? Or that case in which the court can say, that justice has not been done? It was said, that it will do no harm to send this case back to another investigation; but, my lords, can you send it back, without deciding upon the credit of witnesses, which it is the province of the jury to decide upon? Give me leave to observe, upon the concurring evidence of Morton; he does not go to the collateral part of the case, he goes to the very principal part, namely, the publication of the paper; he was able to repeat part of the paper (which he said was read) by memory, viz., "Citizen soldiers, to arms."

This verdict is sought to be set aside, in order to give the defendant an opportunity of being able to find more witnesses against the credit of Lyster, when he has already ransacked the province of Connaught for evidence.

If you do set aside the verdict, upon the ground of these affidavits, you do not give Lyster an opportunity of vindicating his character, which has been depreciated on the present occasion.

This verdict is sought to be set aside upon the ground of the challenge to the jury. I am bold to say, there is not a single authority in the law books to shew where a verdict has been set aside for matter of challenge. If the juror was competent at the time, you will not set the verdict aside for challenge to the jury. There are authorities which do say, that a challenge for competency is not a ground for granting a new trial.*

As to the objection, that the sheriff was partial; a sheriff is the returning officer intrusted by law; if Mr. Rowan had suggested the objection at the time, before any of the jurors was sworn, no doubt your lordships would have postponed the trial, or issued a *venire* to the coroner; on this ground therefore this motion cannot be supported.

Much has been said about the liberty of the press; the best mode to preserve the freedom of the press, is to curb its licentiousness. The most popular character that ever existed in England, Lord Camden, on the decision of a case mentioned in the 11th volume of the State

* Complete Jurymen, p. 262, *et seq*; chapter on new trials.

Trials 1122, gave his opinion on the dangerous consequences of libels ; he said, that they excited discontent against the government, and tended to destroy the liberty of the press by its licentiousness, and said that the worst government was better than no government at all.*

It has been a fortunate event for this country, that this matter has been brought to trial. If, in consequence of the summons to arms by the publication of this paper, the people in arms had by force overawed the government ; if the people in arms had proceeded to act, the gentleman who now stands at the bar for publishing a libel and charged to be a misdemeanour, would be accused of high treason against the state ; if there had been one act of force committed, by the clamorous rabble, who shouted yesterday at your bar, in consequence of this summons to arms, it would fasten the crime of high treason upon this gentleman. It has been a most fortunate circumstance, that a proclamation did issue, it quelled this paper trumpet of sedition. The gentleman at the bar, in every other department of life, is an honourable, a good, and a virtuous citizen, the friend of his country ; but he is a mistaken zealot in point of politics ; a mad philanthropist.

The new scheme of searching for a Utopia, a nation perfect in every respect, has driven millions to their graves ; in that country which has, in the language of the paper in question, got the *start* of us.

I do rejoice that this trial was had, for it has saved that individual character, of whom most men speak good things, and I am one of those, who have the honour of knowing him ; but to let him go on uncontrolled, might be dangerous to himself, he might pull down the building upon himself—he lives to look at the image of his king before him. He has had the most patient trial I ever knew in the annals of this country.

Mr. FRANKLAND, same side.—Every observation, every case, and every principle of law, has been so very fully stated by Mr. Attorney-General, that I feel it necessary to compress what I have to say, into the narrowest compass ; and after so much has been said by the learned gentleman who spoke last, I shall be very brief. The avowed personal regards for the gentleman at the bar, which the learned counsel have for him, have called forth the most splendid display of talents that has been known ; but I consider this case merely as a case between the king and a common traverser ; if this motive had not called forth the exertion of the eminent abilities of the learned counsel, this motion ought to have been decided in ten minutes.

Mr. Rowan now applies to the discretion of this court upon many affidavits, in none of which he has stated one substantive case to make upon a new trial. He has made two affidavits himself, in neither of

* The words of Lord Camden (in the case of *Entick v. Carrington*, 19 Howell S. T. 1074,) are—" All civilized governments have punished calumny with severity and with reason ; for these compositions debase the manners of the people ; they excite a spirit of inobedience, and enervate the authority of government ; they provoke and excite the passions of the people against their rulers, and the rulers oftentimes against the people. When licentiousness is tolerated, liberty is in the utmost danger ; because tyranny, bad as it is, is better than anarchy ; and the worst of governments is better than no government at all."

which he has stated, that he is not guilty of the crime charged. Upon these affidavits have you ground to say, first, that this verdict is contrary to justice? That the verdict was found upon false evidence, not deserving any credit?

I will admit that there is an analogy in principle, between criminal and civil cases; but I will be bold to say, there is not a case in the books, considering the circumstances that arise in this case, where an application has been made for a new trial. There is no case where a new trial has been granted, merely because the witness produced had spoken falsely. However, supposing it was a ground for an application, then look to the circumstances attending this case. You cannot forget that the traverser and his counsel came prepared to impeach the character of Lyster. The jury, it must be presumed, have weighed the evidence; they found a verdict. Do you now send back this case to a new trial, because the person who has sworn that Mr. Rowan did publish the paper at such a meeting in Cope-street, has sworn false?

In cases of this kind, your lordships will look with eagles' eyes. The court will never set aside a verdict on the ground, that a witness produced has sworn false. This Lyster should be indicted for perjury, and then these two men may bring forward the circumstances; but it would be absurd to set aside the verdict against Mr. Rowan upon the affidavits of those two persons, who have sworn that Lyster perjured himself on some other particular transactions. In every application for a new trial, upon the allegation that evidence has been discovered which was not known antecedent to the trial; an affidavit of not only the party himself, but also of his attorney is required. Now, give me leave to ask, why these grounds are stated upon this affidavit of Mr. Rowan himself, and not of Mr. Dowling, his attorney upon record? If you should grant a new trial, when this necessary ingredient, the affidavit of his attorney, has not been complied with, would not every attorney in the hall, the instant he was employed to defend a client charging him with a misdemeanor, say to him, do you listen to no one; do not enquire about your defence; I shall shut the mouth of every man to you upon the subject, and go to trial, and give yourself a chance of a verdict of acquittal; if you should happen to be acquitted, it is well, but if the verdict should be against you, then apply to the court to set aside that verdict, upon the ground of facts which I now tell you of, and which you can swear has come to your knowledge since the trial. Let it not be understood that I mean to apply that there was such a scheme between the present parties. No; but I am adducing a case to the court. I would not have it imagined that I impute any thing in the case I have supposed, to the present defendant; he is a man of honour; but courts will decide upon established general rules, applicable to the case of every man.

The notice in this case is very generally shaped: Is he to be granted a new trial upon the ground stated by these affidavits? Nothing can be more clear than that the defendant had a knowledge that Lyster was to be produced against him. Lyster was examined, and witnesses were examined to discredit him. Will it be contended that there was not evidence for the jury to weigh and deliberate upon? The verdict of the jury shews they did decide on Lyster's evidence. To say, therefore, that this is a verdict against evidence, is utterly

untenable: it is not a verdict against evidence; it comes then to this, is it a verdict against the weight of evidence; will your lordships establish such a rule as this? You never will interpose with the province of the jury; the court will not say it was a verdict against the weight of evidence, the whole of the evidence did go to the jury, and upon that evidence the jury were competent to decide.

As to the second ground, that some of the jury were prejudiced against, and at enmity with the traverser: Upon that ground I was told, that Mr. Curran laid down the position from a case in 5th Bacon which referred to 7th Modern, 57. where a challenge for favour is a good cause of setting aside a verdict. Supposing the case to be in point, yet in the present case the facts set forth in these affidavits would not constitute a good challenge to the poll, or to the array. This appears from the triors oath in Co. Lit. to determine whether you are bound to look to the words of this affidavit; supposing, but not admitting, that the juryman did use the words mentioned six months before the trial; before he was sworn, it was not a good cause of challenge to the poll. Suppose that six months ago, the words used by a juryman were these, "Mr. Rowan has committed murder," when the juror came to be sworn on the trial four days ago, on a charge for a misdemeanor, the juror might say, my mind is now disabused, I was under an error when I did speak the words mentioned, but I never made any declarations upon the matter in issue. The trior's oath is, "to enquire whether the juror stands indifferent as to the matter in issue between the parties." Give me leave to say, that by the principles of law, the court will never send a cause back to be tried on account of the words spoken, as charged in this affidavit, unless the words spoken were such as in law would be a good legal challenge to favour.

The objection made to the sheriff, as returning officer, is for partiality. I was astonished when the traverser and the counsel came forward on a motion to set aside the verdict, because the defendant knew a fact, without stating when he came to the knowledge of that fact, which would be considered as a good legal challenge to the array. Is it because a man is proprietor of a newspaper, has a place in the revenue, and holds a commission in the militia, and he returns the jury—is that a good cause of challenge to the array? But, if it has any weight, when did Mr. Rowan come to the knowledge of these facts? Mr. Rowan could have made his objections before the trial; he had a knowledge of these facts, he knew that Mr. Giffard was proprietor of a newspaper called a government newspaper, had a place in the revenue, and held a commission in the militia. He could then, by an affidavit, have applied to the court, stating that he could not have a fair trial. Your lordships would no doubt have postponed the trial. I do not find in the notice, any mention made relative to any misdirection in the judge. The court was unanimous, the whole matter was left to the jury, who were told that they were to judge of the credit they would give to the witness. Mr. Rowan's being at the meeting was a fact admitted; for on the cross-examination of Lyster it was pressed by the counsel, that the meeting consisted of the old Volunteers, that their uniform was scarlet with different coloured facings. The fact of Mr. Rowan being at that meeting was proved

by Morton, and he said he heard part of the paper read, as "Citizen Soldiers, to arms!" There were near 200 persons at that meeting; that was the fact capable of disproof; if so, there has not been a single person produced to disprove it; that is as a volume of evidence of the truth. I must say I rejoice at hearing this voluntary eulogium on his private character. That has nothing to do with applying to your discretion to set aside the verdict, which twelve men on their oaths have found. This motion ought not to have taken up ten minutes of your lordships time. I think there is no ground to set aside the verdict.

Mr. PRIME-SERJEANT, same side.—My lords, unless your lordships please, I have no desire to speak on this motion.

COURT.—As you please—use your own discretion.

Mr. PRIME-SERJEANT.—My lords, I am counsel on the part of the Crown. This case is totally different from any case in the books. It is unnecessary to go into the detail of the evidence on which your lordships have, in fact, given your opinion. This is a motion made to set aside the verdict, where no evidence on the part of the defendant was adduced, but merely to discredit the witness produced on the part of the prosecution. They ask you to step out of your proper sphere, to judge of the credit of the witnesses, which is the province of the jury only to do. Where evidence has been adduced on both sides, the court may give their opinion to the jury, where the weight of evidence lies, but the jury are to determine as to the evidence and the credit they will give it. I should apprehend there would be a clamour against the court, if your lordships were to step off the bench into the jury box; because the court has nothing to say to the credit of the witnesses. Were you to set aside this verdict, it would be taking away the opinion which twelve men on their oaths have formed, and which opinion the jury were bound by the law of the land to entertain. Therefore, on the ground of the verdict being contrary to evidence, or to the weight of evidence, in a case where there was no evidence on one side, there is not a man of common understanding that cannot say there is no ground for this motion.

It is said, that a juror was prejudiced against the traverser. If there was any contrariety of evidence, if there was any point on which that prejudice was to operate, if there was any scruple of evidence on one side, and prejudice was to give way to that scruple, there might be some weight in the objection, but here there was nothing to exercise his prejudice upon; there is therefore nothing in this objection as a ground to set the verdict aside. If five hundred witnesses had come forward to say, that Lyster is not to be believed upon his oath, it is not for the court to determine, but solely for the consideration of the jurors. The jury must determine whether Lyster was deserving of credit, or not; even if this objection had more weight than it has, the door is shut upon it, as against the traverser. The whole of the case went to the jury, and by their verdict it appears, that they did give credit to what was said by Lyster. An issue was directed to try the validity of a deed, and a witness swore to the execution of the bond at a certain time and place. Before the trial, the defendant in the action gave notice,

he would impeach the credit of the witness, because he was abroad at the time of the alleged attestation to the deed. The case went to trial ; there was a verdict on the evidence intended to be impeached. The party applied for a new trial, on affidavit, that the person was at a different place when the deed was alleged to have been executed. The court said they would not entertain the motion ; he ought to have come prepared at the trial ; we will not now give you an opportunity of bringing on your witnesses at a new trial.*

With respect to the incredibility of Lyster, three witnesses were examined, and now your lordships are called upon to have an examination of Clarke, who appears to have been the hair-dresser of Lyster, and to let in the evidence of Mr. Coultry that Lyster does not deserve credit, after the examination of three witnesses to that point at the trial. With respect to the public principles and character of witnesses, are they to be again enquired into, after they had gone through the fiery ordeal of a cross-examination ? The court would not permit it, after the witness had gone from the table. As to the general character of Lyster, it could not be gone into : evidence did not go to the point that he did deserve credit or not. An objection is made on account of the declaration of the juror ; it was not a declaration of any opinion as to the matter in issue between the parties ; such declarations therefore, could not be the ground of a challenge to the juror. 2 Hawkins 589.

If there be objections to a juror for partiality, it would be a ground of challenge, if accompanied with some particular instances of malice. The law makes ill-will in a juror necessary to support the cause of challenge.

The charge against the sheriff is that he did impanel persons prejudiced, and at enmity against the defendant ; but no particular prejudice is mentioned in the affidavit : Mr. Rowan does state he heard, and believes, that Mr. Giffard is conductor of a newspaper, called a government newspaper, &c. It is not said that Giffard's labours were successful, so as to have a single person on the jury who was unfairly prejudiced against defendant. Mr. Rowan has not sworn that the pannel was absolutely composed of persons prejudiced against him, and such were chosen by the contrivance of Mr. Giffard ; this was in the nature of a challenge to the array made partially, through the misconduct of the returning officer.

As to the incompetency, it is no ground to set aside the verdict ; judge Grose says, "as to the question of competency of witnesses after trial, on a motion for a new trial, we are bound to reject such testimony now ;" though a decision of competency peculiarly belongs to the court. 1 Durnford and East's Reports, 777.†

Locke says, that where a transaction is done in open day, where there is a possibility of contradicting it, not contradicting it is

* Richards v. Symes, 2 Atk. 319.

† Justice Grose's words are, "As to the competency of the witnesses it is not contended that in point of law we are bound to reject their testimony now ;" which do not appear to support the portion laid down by the Attorney-General ; Turner v. Pearte, 1. T. R., 720.

an admission of the fact. The observations mentioned will have a conclusive effect upon the mind of every man that hears me.*

Adjourned to Friday, February the 7th, 1794.

FRIDAY, February 7, 1794.

This day the court proceeded to deliver their opinions, *seriatim*.

Lord CLONMEL, Chief-Justice.—This is a motion made on behalf of the traverser, Archibald Hamilton Rowan, founded on a notice dated the third of February instant; and it is to set aside the verdict had against him in this cause: first, as being contrary to the justice of the case; as founded upon false evidence, and upon testimony not deserving of any credit. The second ground is, that some of the jury, who found the verdict, were prejudiced and at enmity with the traverser, and had declared that opinion before they were sworn upon the jury. The third ground is, because the sheriff who arrayed the pannel was prejudiced against the defendant, and did array the pannel so as to have him tried by an unfair jury.

The motion is stated to be founded upon six affidavits, (of which I have copies, as have my brothers), stated to have been filed in this cause on the third of February, stating the nature of the case, and the reasons to be offered. The motion was called on that day and ordered to stand for the next day, when another ground of objection was made in the argument of the motion, or suggested by counsel, founded upon an observation stated from his memory, and unsupported by any oath; which he argued from, as if used by me in my charge to the jury; which I shall take notice of in its proper place. The affidavits to the first point in the notice, for I have endeavoured to class them so as to make them intelligible to every person; the affidavits, I say, to the credit of Lyster, are three:

1st. Clarke, the peruke-maker, who is of opinion that Lyster is not to be credited, as he believes, because in a suit in the Court of Conscience he, Lyster, perjured himself, by denying any acquaintance with him. The next is Coultry, a gentleman, who is of the same opinion, because, he says, Lyster perjured himself respecting a horse, and made a false affidavit in the name of his brother, whom he personated. Mr. Rowan, in one of his affidavits, for he has made two, also swears to the same points, that he believes, if these two persons had attended at the trial and been examined, this witness, Lyster, would have been totally discredited. That he swears is his belief, and I dare say, that impression is made upon his mind. And he adds further, that from what he and his friends are daily hearing, he has no doubt of proving fully, that Lyster is deserving of no credit on his oath. These are to the first point. Touching the second point in the notice, that is, the partiality or prejudice of the jury, or some of them, William Atkinson, a watch-maker, has made an affidavit, stating that in August last, on an occasion of some illumination, he had a conver-

* It was impossible for the Editor to have obtained any correct note of the arguments of the Solicitor-General or the Prime-Serjeant. Their arguments appear to have been reported with great inaccuracy, and, as they at present stand, are very loose and inconclusive.

sation with Mr. Perrin, one of the jurors, respecting the Volunteers; and that, with respect to the body in general, he spoke with acrimonious language; but particularly with respect to Hamilton Rowan; that he and Napper Tandy deserved to be hanged, or the country would never prosper, or to that effect; and Mr. Porter swears that, since the commencement of this prosecution, and before the trial, Mr. Perrin made use of some other expressions of the same sort; and Mr. Rowan swears, that he believes that some of the jurors did, previous to this trial, use expressions tending to asperse him, therefore they were heated against him, and had impressions in their minds unfavourable to him.

With respect to the third point in the notice, Mr. Rowan swears he heard and believes that Sheriff Giffard, by whom, or by whose undersheriff, the panel has been arrayed, is the conductor of a paper generally understood to be a government paper; that he has a lucrative office in the revenue, and is an officer in the Dublin militia; and that he is strongly prejudiced against him, and did labour to have such a panel arrayed, of such men as he knew were unfairly prejudiced against him. These are the affidavits touching the three grounds stated in the traverser's notice. And as to the general merits, Mr. Rowan further states, that he was present during the trial, and that he heard the evidence given by Lyster and Morton, charging him with having read, distributed and published the paper in Pardon's school, and he swears that said testimony is utterly false. This he positively swears to; but he does not, however, deny any of the particular facts alledged in the information against him; as to that he is silent, and he undertakes to contradict no fact sworn in the evidence against him, but that which I have mentioned.

Thus stand the affidavits upon which this motion is grounded. It may not be amiss to give a short history of this case, so far as we have judicial knowledge of it, in order to throw light upon the situation in which Mr. Rowan stood when his trial came on. He was arrested in consequence of the publication in question, above a year ago, and gave bail to that arrest, before Hilary, 1793, viz., on the 20th of December, 1792, (I believe I am not mistaken, but it is not very material), and the first information, *ex officio*, for that is not the one on which he has been tried, was filed, Hilary, 1793; and now I speak of what passed in this court. On the sixth of May last, near nine months before his trial, in Easter Term, which ended the thirteenth of May, Mr. Emmet moved to vacate his recognizance: Mr. Attorney-General consented. Mr. Rowan and his bail appeared in court, and it was vacated, as he was ready to be tried upon that information: next was a motion on his behalf, by the Recorder of the city of Dublin, to appoint a day for his trial in the term following; that motion was made in Trinity Term, but the Attorney-General applied to the court stating, that he had discovered an error in the information, and entered a *noli prosequi*; accordingly no trial was appointed. A new information was filed, and in Michaelmas Term, several weeks after the city sheriffs were chosen, a trial at bar was moved for, and a day appointed in this present Term (the 29th January). On the 11th of November last the Attorney-General moved to amend the information, by striking out one of the inuendos. The Recorder appeared on behalf of Mr. Rowan, and said he was instructed not to

oppose it. On the 29th of January the trial was called on, and no challenge having been taken either to the array, or to the polls, either principal, or to the favour, the jury were sworn, and tried the cause. There were questions put to some of the jury touching their opinions, whether they had declared them or not, upon the matter in issue: one of them having said, after he was sworn, that he had given some opinion, he was withdrawn by consent; nor was it objected to by the crown lawyers; and these questions, which are said in the books to tend to reproach, were asked, and not objected to.

I must here invert the order of the points, to make it more clear, by following the order of time. The first objection then, is that stated by Mr. Rowan's affidavit to the sheriff's pannel. He swears that Giffard, by whom, or by whose sub-sheriff, the pannel was arrayed, is conductor of a newspaper, generally considered a government paper; that he has a lucrative office in the revenue, and is in the militia; and he believes he laboured to have such a pannel arrayed, as were prejudiced against him. This I shall first consider in point of law, and then of hardship, as addressed to the discretion of the court. First then, would it have been a cause of challenge upon a demurrer? Clearly not; there is nothing certain nor ascertained in it; is it in law, a ground of challenge, that a man conducts, what is considered, a government newspaper? What is a government newspaper in legal estimation? A chimera of the brain. Is it meant to be insinuated that government, or the crown, to use a more proper expression, was at war with Mr. Rowan, or that any thing done, on the part of government, was to be injurious to him? I hope not; nor that any thing he did is to be injurious to government; I trust not. I put it the other way: suppose it had been objected, on the other side, that a juror had published a paper called Mr. Rowan's paper, or the *Free-man's Journal*, or any paper of that kind; would it be an objection that could have any weight? Undoubtedly not; no denomination of subjects, under that general name, can furnish an objection even to the prosecution.

Then again it is stated that he held an office under government, and was in the militia. If this were to be a disqualification, then mark the consequence: every sheriff in the thirty-two counties of Ireland at large, would be disqualified to return a pannel: which amounts to this absurdity, that the very grant which qualifies, by law, every sheriff to make returns, does *ipso facto* disqualify him, because the office of sheriff is under the crown: and if holding an office under the crown disqualify a man, it involves this palpable absurdity, that the very grant, which makes him, disqualifies him from acting. But it is still weaker with respect to the sheriff of Dublin, for that sheriff is not appointed immediately by the crown, but by election: however I have exposed this objection: upon the other ground I put it, that it would be absurd that the very office should be a direct disqualification, from the fulfilling of the most important duty of it. But then Mr. Rowan *believes* him to be prejudiced against him, and that he laboured to return a prejudiced pannel. Would his belief be evidence of favour? Surely not; but the law, not grounded on weak suspicions, disregards such conjectures, and rejects the surmises of interested parties. Our law, also, appoints a proper time, when even

legal objections can only be received. The time for challenging the array, is before any of the jury are sworn, and for challenging the polls, when they come to the book ; but if the party accused takes his chance with the jury, he afterwards comes too late to object to them ; such is the language of the law, and the manifest principle of justice. But to take it upon the point of hardship, which has been insisted upon, there appears to be none ; he had three months' notice, and near two terms had elapsed, during which time he never expressed any discontent against the sheriff, nor suggested to the court, by affidavit or otherwise, that the sheriff was partial, or adverse to him. He and his attorney must both have known that this man was sheriff, and yet never applied to have the trial postponed, or the process directed to any other officer ; and even in his affidavit, made since the trial, which is unsupported by any other, he does not state that this cause of complaint came to his knowledge subsequent to the trial ; indeed the reason of his belief speaks the contrary, namely his being the conductor of, what is called, a government paper, an officer in the militia, and in the revenue ; which facts, it is presumable, he could not have been a stranger to at the time of the trial.

Next comes that objection to the juror Perrin, in answer to which, what I have already said, respecting time, that the challenge should have been made before the juror was sworn, and if a challenge had been made, there is not enough in the affidavit, even supposing the facts true, to support it.* It is not sworn that he made any declaration respecting the matter in issue, nor in malice, to the defendant. 2 Hawk. P. C. 578, 8th Ed. The prior's oath illustrates and is applicable, it is to try, whether the jurors are indifferent upon the matter in issue ; but I still resort to what I said before, the objection now comes too late. A third objection goes to vitiate the verdict as unjust, founded upon false, or uncreditable testimony. This is a question of great extent, and of great consequence to the administration of criminal law ; the object desired is, to be let in, it is said, to impeach further by new witnesses, the credit of persons, already attempted to be discredited on the trial. If that were yielded to, no verdicts for misdemeanours against the traverser could stand, as long as a man could be found to swear that the witness did not deserve credit. It would be a direct and general invitation to such perjury as could not be punished by an indictment, and would tend to withhold a part of that evidence by which the witness on the first trial might be impeached, and hold out an invitation to persons to offer themselves after the trial, to discredit the witnesses with safety, perhaps profit to themselves. It would wound the constitution deeply, by transferring the jurisdiction of the jury to the court, and would totally overturn the trial by jury. It is admitted by the defendant's counsel, that no case has been found to authorise it, and the case cited 7 Mod. 57. has been searched for, and cannot be found ; I have found a case in page 54, which, so far as it goes, is against him ; it would be strange and unjust if it could, but there are other cases,

* In the case of *Lady Herbert v. Shaw*, 11 Mod. 119. it is said by the court " if a party have cause of challenge and know of it time enough before the trial, if he do not challenge he shall not have a new trial ; contra, if he has not had timely notice of it."

which go much more strongly against him, where it has been attempted to set aside the verdict where the witness has been incompetent, of which the court, and not the jury, are by law the judges. Hyan and Ballan cited 7 Mod. 54, referred to 5 Bacon, was the case of a non-suit, and the court refused to set it aside, although the deed, upon which the defendant relied, was sworn to be a forgery; and Turner and Pearte 1 Term Rep. 717. is much stronger than this, against what is applied for. An application was made for a new trial upon affidavit, that five of the witnesses produced by the party, who obtained a verdict, were incompetent, and ought not to be examined at all; there is an affidavit in answer, that the party who called these witnesses did not know that there was any objection to them. Ashurst, J. said they came too late after trial. Now their evidence was to be considered as a nullity, that they never should have been examined at all; not what credit they deserved, whether more or less, which the jury are judges of, not the court. And in that case, where the matter was of law within the power of the judges, whether competent or not, though it was sworn that five of them were interested, and incompetent of course, yet the court would not hear the objection because it came too late, and Mr. Justice Buller, a very great lawyer, says "there has been no instance of this court's granting a new trial, on an allegation, that some of the witnesses examined were interested, and I should be very sorry to make the first precedent." There never yet has been a case in which the party has been permitted after trial to avail himself of any objection which was not made at the time of the examination. Mr. Justice Grose, in the same case, says, "In the first place it does not clearly appear, that the plaintiffs did not know of the objection at the time of the trial. It is sworn very loosely; and if they knew of it, at that time, that would be a decisive reason for refusing to allow it now." And now I shall apply this opinion, in this case, to the last objection made by counsel, as well as to what I have already said; but there it was said by Mr. Justice Grose, that the objection to the witness might be an ingredient if the party applying had merits. In 2 Term Rep. 113 in the case of Vernon and others, the assignees of Tyler v. Hankey, the court would not grant a new trial, to let the party into a defence, of which he was apprized at the first trial. I have cited these cases to shew, that even in case of incompetency, where the witness ought not to be permitted to stand upon the table, or open his lips—there after trial, the court would not set aside a verdict upon that ground. But see what Mr. Rowan's affidavit is, even if it could be listened to as to his own innocence; he says, he heard the evidence of Lyster and Morton, charging him with having read, distributed and published the paper in the information, in Cope-street, at Pardon's fencing school, and positively swears, that their testimony was utterly false. Now first, I say, that no trial or verdict was ever set aside, in a case like this, upon such an affidavit. It is at best the oath of the party to his own innocence; but it is not so much; here he does not deny the facts, not one of them; and let me take the words "utterly false" in every sense they convey; if he means false in every thing, then he has surely made an affidavit stating that he has heard the evidence of Lyster and Morton, charging him with having read, distributed and

published the paper, that, he says, is utterly false. To use the expression of one of the judges in that case I cited, it is a great deal too loose; the party swearing for himself does not even contradict Lyster; he does not contradict any one of these facts specially. I will ask, could he be found guilty of perjury, upon such loose swearing, supposing it to be false? I should think not. But it is material to another part, that this is the only part of their testimony which he has contradicted, and he might, when he undertook to contradict any of the facts, have contradicted the whole, or any other part, as far as the truth would justify him, at least upon hearsay or belief; he has not done that.

But it is urged from the bar, upon a point not stated in the notice, but from the recollection of one of the counsel, unto which no affidavit refers, that I assumed to the jury the fact of a meeting, at Cope-street, of 150 men, at which Mr. Rowan was present, which he has not contradicted; upon that I have built a strong inference of guilt, upon the presumption arising from their silence. Here I will state, as accurately as I can, what I did say; what I did not say, which has been imputed to me; in which I have the concurrence of my brethren as to their recollection. I told the jury, and meant to have told them, as far as my recollection serves me, that the observation made by one of the prosecutor's counsel, indeed by two of them, first Mr. Attorney-General, and afterwards Mr. Prime-Sergeant, struck me, as obvious and strong, viz. that the defendant did not contradict by a single witness, any one fact sworn to against him; I then stated some of the leading facts sworn to, those facts as I thought easiest to be contradicted, and those facts which brought with them, if they were true, the means of defence; for example, that there was a meeting in open day at a public fencing school, where from one to two hundred persons, many of them in Volunteer uniforms, were sworn to have been present; this fact, I told them, was sworn to by two witnesses, and if the jury believed there was a meeting of the kind and number sworn to, it was to my mind a volume of evidence; I say so still, that the defendant did not produce any of the persons to contradict any of these facts, or prove that he did not read, publish or disperse the libel in question. He has now made an affidavit, and see the power of perverting fancy; Gentlemen argue for an hour upon affidavits, because the facts sworn to are not contradicted, and they insist upon these uncontradicted facts as truths; these six affidavits, say their counsel, are strong and uncontradicted, and therefore the facts in them must be assumed; but on the other hand, Mr. Rowan has made an affidavit, and he has not to this hour, ventured to contradict all the facts proved against him on the trial; and shall we not be at liberty in our turn, to assume upon this motion that he cannot contradict them. He swears he heard the evidence; he has not ventured to contradict any of those facts; he has not sworn that there was not a meeting of so many persons, nor any thing of that nature.

Now I will state what the evidence was; Lyster swore, that on the 16th December, 1792, he was at Pardon's fencing-school, in Cope-street, in the city of Dublin; that there was from one to two hundred persons present in scarlet uniforms: that Napper Tandy, Hamilton Rowan, and others, were sitting at a table: the witness

M

went in from curiosity, and he was told by Mr. Rowan, to the best of his knowledge, that no man in coloured clothes could be admitted there. He does not contradict that conversation with this man—that there was a gallery, to which he might go; that is not contradicted—that Hamilton Rowan was very busy, and walked about with papers in his hand; these facts, let it be remembered too, that he swore upon belief and vague recollection to the best of his knowledge. I told the jury this was not evidence, and should be rejected; but he does not now contradict any of those facts; then he goes to the publication. So it was with respect to Morton, what did I tell the jury? after stating the act of parliament which declares, if not gives, a power to the jury, to find upon the whole matter, which I told them they had a right to do; that the credit of the witnesses was with them, and not with me; that they were to find, upon the whole matter in issue, and that they were the judges of the fact, and the intention. Did I assume any fact? No; that fact, as well as every other, was to be determined upon belief or disbelief of the witnesses. Such may not have been my identical words, but such must have been my manifest meaning, and the court approved of what I said. And I say now with certainty, I never said to the jury, that the defendant's silence upon those facts, was to supply any defect in the prosecutor's evidence; I disclaim it. I did not assume the fact, nor did I mean or direct that the jury should take it for granted, that there was any meeting whatsoever.

These facts were sworn to, like the others, by two witnesses, except the fact of publication, which was the criminal fact, and which was sworn to by one witness only, and so I stated to the jury, that Lyster whose credit was attacked, if they did not believe, I told them they ought to acquit. I then left the whole of the facts and credit of the witnesses and the intention of the paper (if they believed the defendant published it) to the jury, who were, I told them, to determine upon the whole matter.

But suppose the fact otherwise, and as favourable to the defendant as his counsel wished to have it taken, it cannot avail upon this motion either, in law, or justice, or fact, or legal discretion; first it makes no part of the notice; next it should have been objected to below. It was the duty of the gentleman who urged it now, and he was not remiss, to have taken notice of it at the time; thirdly, it falls under the general rule that any objection which could have been made below, and contradicted or refuted by evidence, cannot afterwards be taken advantage of. It might have been instantly answered, qualified, contradicted, or adhered to; but in truth, the general course of the defence rejected all ideas of disproof; it was to justify that paper; and standing upon that ground, it scorned to deny the publication; I take that for granted; for no attempt was made to contradict a single fact sworn to by one or other of those witnesses. But, upon this motion, how is it to affect our discretion? Does it appear now that any of those facts are contradicted? What are we then to judge of? Is it that manifest injustice has been done, which is the principle that governs motions for new trials? Is there any thing like a new substantive defence set up, which has not been made before? Is it said by any of the persons

who have made affidavits here, or by the traverser himself, that he can by witnesses contradict these facts? Not a word of any such thing; and if we are to draw the same inference from the silence of the affidavits, which was drawn from not answering them in the arguments of the case; see how it stands, what he has not contradicted he has admitted—but I have no occasion for that. This motion is addressed to the discretion of the court; that is to the court bound by the curb of legal discretion, for we cannot indulge our feelings be they what they may, and legal discretion is as well ascertained as any express point of law. Adjudications are evidence—we are obliged to follow these, as evidence of what the law is. It is said there is an analogy respecting the granting of new trials, between cases of misdemeanors and civil cases, and yet, in order to determine this motion, as defendant's counsel desire, we must abandon that very ground of analogy: the great principle is that, and that alone, which is recognized in *Bright and Enyon* 1 Bur. 390, alluded to and adopted in many others, from the cases in *Styles* (448, 462, 466,) to this hour—Has substantial justice been done? Has the party who requires a new trial been manifestly injured? Upon what ground is it we are to presume an injury done to the traverser? He has had fourteen months to prepare himself. In trials for their lives, men have often not more than one, and very seldom more than six months; he had fourteen—they, though confined and in prison, are supposed to have time to defend themselves in felonies of death—here the party at large, complains, invites, provokes the trial. Has he been surprised? Has he wanted the aid of counsel? Has he been unattended with friends and followers? Look at the history of the trial. What new defence has he alledged? has he, even himself, contradicted the facts charged against him? No; from what then are we to infer, that injustice has been done to him? It was said that whether by right or by courtesy, by indulgence, or connivance, persons in his situation find a way to the matter charged against them. See how that stands: there may be very good and sufficient and proper reasons, not to disclose the name of the party swearing the information; to protect him from violence or corruption of the party sworn against. How is this case? The very thing which most deserves to be concealed, was made known to him and his agent; for the person, that is to swear against him, is disclosed to them, they trace him to the place of his birth, they enquire into his family and connections, they follow him through his private bargains and engagements, they become acquainted with his indiscreet, and perhaps immoral conduct; shall we presume, that this man, whose name was then at the foot of the examination, was unknown to him? Where are we to look for that substantial justice, by which he can protect himself on another trial? I find it no where; I find it not in the principle of the criminal law; I find it not in adjudged cases; I find it not in the sound discretion of the court; he has had every possible indulgence; he has had every latitude of defence by justification (at the least as far as it would go) by insinuation, by address; and I trust, in this free country, I am not mistaken when I suffer counsel to go as large, and take, as wide a range, as decent language will admit, to convey every sentiment which may assist his client: can we say the merits are not tried? Is

it said the merits are in his favour? But see, as I said before, how perverting imagination can change the most common maxim: is it alledged that the juror, who is complained of, exerted himself to influence the others? that this was a case of a struggle amongst the jury? O! No; but the case was so clear, that there was not a minute a man in the deliberation. Then where there is not a struggle, and it is not said that he did act partially, or work upon the other eleven, or that by his unjust means, the verdict was obtained; yet we are desired to step out of our way—to go unconstitutionally into the jury box, and say, that they should not have given credit to the witnesses, where the constitution gives them a power to decide. I am therefore, clearly of opinion, that the verdict cannot, upon any principal of law or justice, be disturbed.*

Mr. JUSTICE BOYD.—This is an application to set aside a verdict upon an information. My Lord Clonmel has stated the affidavits so much at large, that it is not necessary for me to take up much time. The counsel in the argument rested the case;

1st. Upon the declaration of a juror against Mr. Rowan.

2nd. Upon the partiality of the sheriff.

3rd. The incredibility of Lyster the witness, and

Lastly, the misdirection of the court.

As to the declaration of the juror, there are two affidavits, which state it, but it was upon a common subject; it had no relation whatever to the matter in issue; it does not appear that this declaration was malicious, and the authority in Hawkins establishes that a declaration to prevent a man from being a juror, must be pertinent to the matter in issue, and malicious. The declaration of Perrin, in my opinion, if laid before the court in proper time, was not a ground of challenge in point of law; and I must conclude it now comes too late; it was an objection merely to the favour; it is a matter *in Pais*, to be determined by triors appointed; and here the court are desired to assume the province of a jury and try it here. But I think it now comes too late. In this case it does not appear, that justice has not been done, which is the true ground of setting aside verdicts. It is no where suggested, that the misconduct of this juror was the cause, by which the verdict was obtained. The shortness of the time that the jury were withdrawn, is a strong ground to presume, they were not persuaded by him.

2dly. As to the charge of partiality in the sheriff, Mr. Rowan in his affidavit speaks only as to belief; he does not charge it positively. The same observation I have already mentioned, goes to this point; there was not a challenge taken to the array, on the ground of partiality in the returning officer. This being an application to the discretion of the court to set aside the verdict, the question is, has justice not been done? The charge is general upon belief; and yet the affidavit does not say, that the sheriff did procure a partial jury, or that he could procure it; and in this case, as in every other, the not making objections at the trial, is a strong ground to prevent the

Rex. v Mawbey 6. T. R. 638; Vernon v Hankey 2. T. R. 113; 2 Salk 647, 653; Bull N. Prius 327; Sayer Rep 27; 1 T R 717; Chitty's Criminal Law 656; Howlet v Crutecheley 5 Taunt 277.

court from interfering, especially where the traverser, in no part of his affidavit, swears he is not guilty; or has a good cause of defence to make upon a new trial, which, in my opinion, are two material grounds, in granting new trials. As to the incredibility of Lyster's evidence, I must observe that evidence was offered at the trial, which shews to demonstration, that the defendant was prepared; he produced three witnesses against Lyster, for he did produce Blake, Smith and Hatchell, their evidence and Lyster's, and Morton's, all went up to the jury; the jury have found their verdict; and this application is made to the discretion of the court, to set that verdict aside and to grant a new trial, to let in further evidence in support of that, which the jury did not credit, that is, of the witnesses, who charge that Lyster ought not to be believed on his oath. There is no instance in the books to be met with to warrant such a proceeding. There are instances, where a court has refused to set aside a verdict, on the ground of incompetency of the witnesses on the former trial, because the defendant had taken a chance of a verdict in his favour. Suppose a new trial granted, what would be the consequence? Lyster would be examined before another jury; with the suspicion of the court of King's Bench falling upon him, that he was an incredible witness.

As to the misdirection of the judge; I attended to every word, as I always do to what falls from his lordship; I recollect the substance of the charge, it had my entire approbation, it was, that the defendant did not contradict, by a single witness, any one fact charged against him. His lordship stated several of the facts, which he thought might be disproved, if not true; the meeting was at noon day, in a public room, and 150 persons present, in uniform; the evidence of Lyster was confirmed by Morton, but Morton had not the paper, but heard the expression, "citizen soldiers, to arms." On the whole the evidence went to the jury, but there was only one witness to the fact of publication. If the jury believed there was any meeting of the kind and number that was so mentioned, the defendant did not produce a witness to contradict one of the facts so alledged. His lordship did not say, that the defendant's silence was to supply the defects in the prosecutor's evidence. All the facts were left to the jury by the court, and each of us made such observations as occurred to him. By the verdict the jury, it appears, did give credit to the witnesses, and did believe there was a meeting. The description given of the meeting was, that there were 150 persons present. These were strong circumstances to go to the jury. If you believe there was a meeting, not one of those persons has been brought forward to contradict these assertions. I know of no judicial determination of any case similar to the present. In this case, the traverser does not swear he is not guilty. If this was a civil case, here is not ground for a good demurrer. On the whole, I concur with Lord Clonmel, that this verdict ought not to be impeached.

Mr. Justice DOWNES.—This is an application, to set aside a verdict of guilty in a criminal case, on several affidavits. I hope that it will be recollected, that the affidavits have been read without opposition from the counsel for the crown, and that the court have not given any opinion whether after a verdict of guilty in a criminal case, the

defendant has a right to have such affidavits read, as have been produced in this case; but as they have been read, I shall examine the grounds of the motion, which is founded on them.

1st. The verdict is sought to be set aside (according to the notice) on this ground, that it is contrary to justice, founded on false testimony not deserving any credit; those are the words of the notice.

This is a direct appeal from the jury to the court, in a matter solely within the province of the jury; the court cannot decide on the truth or falsehood of evidence, and yet we are desired to set aside this verdict on the ground, that the evidence was false, and that the jury ought not to have believed the witnesses.

No fact sworn to by either of the witnesses for the crown, on the trial, was then contradicted by evidence, no new witness is discovered, who can, in case of a new trial, contradict any fact sworn by either of those witnesses.

The truth of their testimony as given on the trial, is even now contradicted only by the affidavit of the defendant; the court can make no distinction between defendants, and no instance is, or I believe can be shewn, where the oath of a person found guilty, contradicting the witnesses examined against him on the trial, has been allowed to shake the verdict that convicted him; and if it should be suffered to do so, I believe few convictions would stand.

But it is said, that if the verdict should be set aside, new light will be let in upon the case by the evidence disclosed in these affidavits.

But what is the new light that is suggested; not upon the merits of the case; it is not alledged that any new ground of defence is discovered; no affidavit of any of the new witnesses says one word of the matter in issue in the cause, and the defendant himself does not in his affidavit state, that if the verdict shall be set aside, he can at a future trial, produce any evidence, as to the fact with which he is charged.

But it is said, that new light can be thrown upon the defect of credit in Lyster, the principal witness for the crown.

Not by shewing that any fact he swore was false, the best mode of discrediting a witness; it is not suggested that the defendant can produce any evidence to that effect.

But, two witnesses can be produced, who will swear, that they think he ought not to be believed, and to let in these opinions, we are desired to set aside the verdict.

I say, to let in these opinions, for the particular facts of perjury, which they state, could not be suffered to be proved at the trial.

And I think it is at least doubtful, whether if they had appeared on the trial, which has been had, they could (from any thing appearing on their affidavits) have given any evidence at all; for neither of them speaks as to Lyster's general character; whether that be such as not to deserve credit in a court of justice, and it is with respect to his general character only, that a witness can be prepared to defend himself, and not against the opinion of an individual.

But if it were admitted, that a verdict might be set aside, where a party is surprised by the production of a suspicious witness, who he had no reason to suppose would be examined against him; yet

this is not that case ; here it is evident, that there was no such surprise ; the defendant knew before trial, that Lyster was his prosecutor, he was prepared at the trial to impeach his credit ; he examined three witnesses for that purpose, the jury have weighed and decided upon that credit ; and can we say, after the credit of this witness has been examined by the jury, that particular facts, sworn by him, in some of which he was corroborated by another witness, and contradicted by none, ought not to be believed, because persons come forward and state that they would not give him credit on his oath ; it would, in my apprehension, be a most mischievous decision, if the court were to do so. And I know not how any verdict could ever stand, if it were sufficient ground to set it aside, that new witnesses come and tell us, that the former witnesses ought not to be believed.

My lord has cited cases on this point, which I need not take up time in again going over.

As to the declarations sworn to have been made by a juror—

Mr. Curran cited a case, which cannot be found in the book referred to ; but supposing it has been decided, that a cause of challenge not known at the trial, is sufficient to set aside a verdict, I cannot feel, that mere general declarations, though severe ones, relative to the defendant's political conduct, made long before the trial, upon a conversation, no way concerning the matter in issue, would have been sufficient cause for a challenge. I cannot think that such general declarations could form any ground of challenge, for if they would, suppose a rebellion in the country, no loyal subject could be a juror on the trial of any of the principal persons concerned in it.

As to the objection grounded on the conduct of the sheriff, it is enough to say, that no particular act of partiality is stated, and that his having endeavoured to procure a prejudiced jury is stated, only on belief—no act of the sheriff is stated, upon which that belief is founded ; nor whether it was formed before the trial or not ; and if the defendant had apprehended that the sheriff would misconduct himself, he ought to have taken the proper steps to have the jury process directed to another officer, which could easily have been done, if sufficient grounds existed.

These objections—to the witnesses, the juror and the sheriff, are all the grounds, upon which the verdict is impeached by the notice served on the part of the defendant ; and, in my mind, it would be a severe and dangerous injury to the trial by jury, if we were to disturb this verdict on any or all of those grounds.

But an objection is taken to my lord's charge to the jury, and it is contended, that there has been a misdirection ; that an illegal charge has been given, and that, on that account, the verdict ought to be set aside.

When that charge was given to the jury, I thought it a clear, able, fair and legal charge—I think so still.

I attended to it minutely ; as it was my duty to do ; if I had perceived any assumption of any fact, any observation in my opinion unwarranted by law ; I should have pointed it out to his lordship on the spot ; and from the manner, in which my humble assistance has been at all times received by him, I am confident that I should have had his thanks for so doing.

I saw no reason to object to any part of the charge when it was delivered, and I expressly concurred in it.

When, upon the recollection of counsel, without affidavit, of the words of the charge, my lord was stated to have used expressions to the jury, which conveyed to them—absolutely that there was a meeting of a great number of persons—I had no recollection of the fact of a meeting having been assumed in the charge.

And when it was contended, at the bar, that it was put to the jury in words amounting to this position or effect, that the silence of the defendant would establish a charge, or supply evidence not fully proving the case, I must say, that the impression made on my mind, by the charge, excited no such idea. I conceived the charge to have left the fact of the existence of a meeting, and the other facts of the case, fairly to the jury, upon the evidence given by the prosecutor's witnesses, without assuming the truth of any of those facts, but leaving the credit of the witnesses to the jury. I requested his lordship to give me, in writing, his charge, as to this part of the case, according to his recollection of it, and he gave it to me as stated by him to-day—and the substance and effect of it corresponded with my own recollection. As to the observation objected to, that the silence of the defendant was strong evidence, which was the meaning conveyed by the words, a volume of evidence: I think the observation justifiable, prefaced, as it is by my lord stated to have been, and from whose statement I must take it, in this manner—"if the jury should believe there was a meeting of the kind and number sworn to by the two witnesses, the not producing any person who was at that meeting to contradict any of the particular facts, sworn by them, or to prove that he did not publish the libel in the manner sworn." Is this a violation of the maxim, that no man is bound to accuse himself? Does this amount to the position, that the silence of the defendant will prove a charge? It will not; it would be monstrous if it were so held. If no charge is proved, he may be for ever silent; but where one witness has fully proved the fact of publication, if believed; where he stated that fact, attended with a number of circumstances, easy to be contradicted if false; where many of those circumstances are corroborated by the evidence of another witness, who swore he was at such a meeting as, Lyster described. Is it not a fair observation in a judge to say, (where no manner of evidence to contradict any of those facts is given) that if the jury believe that there was such a meeting as sworn, the silence of the defendant is strong evidence—strong evidence that the facts which are sworn to have passed at that meeting, and which might, if false, be readily contradicted—were truly sworn.

If no case is made out in evidence, by the prosecutor, the defendant may be safely silent, and the jury ought to be told by the judge, that no case is proved; but if a case is sworn to, and fully by the prosecutor, if the defendant chooses to be silent, as to the facts, and to rest on the discredit of the witnesses against him, he runs the risk of their being believed; and if the account they give is such, and circumstances sworn to by them, strike the jury to be such, as that they might be easily answered and contradicted if false, then if no answer is given, the jury may be well warranted to believe them; and a

charge of a judge, fully and strongly putting such case before the jury, and with such an observation, would not in my mind be reprehensible.

Suppose the only witness in a case of felony, should be an approver, a witness whose credit is reduced to the lowest point of degradation; he may state such circumstances, as from the facility of contradicting them, may force credit from a jury, and would it be unjust or illegal for the court to observe, that where the facts sworn to, were easy to be contradicted if false, it was a strong circumstance against the prisoner, that he had produced no evidence to contradict them; that such conduct furnished evidence to strengthen the credit of the witness.

This objection was made for the first time, when the motion came on to be argued; it is not stated in the notice that there was any misdirection; from whence it might be conjectured, that it had not struck the counsel, then, that there was any ground in the charge, on which the verdict could be attacked; two very able counsel spoke to the motion for the defendant, without touching upon any objection to the charge.

And the learned gentleman, who took the objection, had immediately after the verdict came in, informed the court, that his client would (if the court thought fit) then receive the sentence of the court. It is hard to imagine, that if that counsel, the only one who attacked the charge, then thought that there was a misdirection in the court, which would have intitled his client to set aside the verdict; it is hard, I say, to imagine that he would have informed the court, that his client was willing to appear, and receive judgment, which, if the court had then pronounced, he must know, would have shut his mouth for ever from taking any advantage of any misdirection of the court, if any had existed.

I think there has been no misdirection, and therefore, and because I think the other grounds stated, are insufficient to set aside the verdict, I think the motion must be refused.

MR. ATTORNEY-GENERAL.—My lords, it is my duty to apply to the court to pronounce sentence upon the traverser.

MR. JUSTICE BOYD.—Archibald Hamilton Rowan, you have been found guilty, by a jury of your country, of publishing a false, wicked, and seditious libel, of and concerning the government and constitution of this kingdom, with an intent to excite and diffuse among the subjects, discontents, jealousies, and suspicions of the king and his government; to raise dangerous seditions and tumults; to throw the government of this country into scandal and disgrace; to excite the people to make alterations in the government, and to overawe and to intimidate the legislature by an armed force. This charge was exhibited in an information filed against you by his Majesty's Attorney-General, and the whole matter was, as it ought to be, left to the jury, who have found, first, that the instrument set forth is a libel; secondly, that you did publish it; thirdly, that you published it with the intentions stated in the information. The libel is contained in a printed paper, intitled, "An Address from the Society of United Irishmen at Dublin, to the Volunteers of Ireland." This publication followed and animadverted

upon a proclamation published by order of the lord lieutenant and council, to which you have attributed an intention to create internal commotion, to shake the public credit, and to blast the Volunteer honour. This proclamation has had the sanction of both houses of parliament. At this period, and it is upon the records of parliament, the great body of the Roman Catholics were seeking relief; they presented dutiful addresses, stating they were anxious to be liberated from restraints they laboured under; but you addressed them to take up arms, and by force to obtain their measures; they were palpably to be made a dupe to your designs, because you say you will proceed to the accomplishment of your beloved principles—**UNIVERSAL EMANCIPATION and REPRESENTATIVE LEGISLATURE.** Seduction, calumny, and terror, are the means by which you intend to effect them. The Volunteers are to become instruments in your hands, and despairing to seduce the army, you calumniate them with the opprobrious epithet of mercenaries. You say seduction made them soldiers, but nature made them men. You stigmatise the legal establishments for the preservation of order, as a notorious police, and the militia, the pride and the strength of the kingdom, are to be looked upon as suspicious. You called upon the people to arm—all are summoned to arms to introduce a wild system of anarchy, such as now involves France in the horrors of civil war, and deluges the country with blood. It is happy for you, and those who were to have been your instruments, that they did not obey you. It is happy for you that this insidious summons to arms was not observed, if it had, and the people with force of arms had attempted to make alterations in the constitution of this country, every man concerned would have been guilty of High Treason.

The sentence of the court is—

Mr. HAMILTON ROWAN.—My lords, I am perfectly sensible of the forbearance of the court in this trial, and particularly during the arrangement of a long affidavit; I hope therefore that I shall be allowed a few words, either in mitigation, or in whatever other character I may have a right to address the court, before they pronounce their sentence. (Mr. Justice Boyd desired Mr. Hamilton Rowan to proceed.) I need not apologise, my lords, for any little errors I may fall into, for I am known to be a man unlearned in the forms of these courts, but I shall as plainly, and as shortly as I can, state every thing as it struck my ear and understanding. My lord, if I understood rightly, the three heads under which this matter has been argued are, the evidence, the jury, and the sheriff; I did hope that the objections taken to these, by my counsel, would have set aside the verdict.

There are some parts concerning the evidence, in which the court, as well as the prosecutor, seem to have been mistaken. They have taken it for granted, that I knew the person who was to be brought to give evidence against me; and it was asserted by the bench, that I had ransacked Connaught for evidence against the character of Lyster. I do not know what impression this might have made upon some of the jury; it was indeed corrected at the time, but it was not sufficiently done away; it is plain it was not, for Mr. Solicitor-General who was present the whole time, whose duty it is, and whose

inclination he declared it to be, to listen with attention and deference to every thing which fell from the bench, has since repeated the same assertion. I certainly did suspect, that the person who has now been brought forward, was the man who had lodged the informations against me; but I hoped that my trial had been postponed by the prosecutor, from a knowledge of his character, and a wish to procure more credible testimony, as to the fact of the distribution. I had certainly every reason to suppose this had been the case, as I knew that several of my friends, men who belong to the old Volunteer corps, and who probably were at that meeting, if there were any such assembly, had been summoned on this trial by the prosecutor. They attended in the court, but were never called upon. Perhaps I am wrong to mention this, but had they been called upon, I know the charge exhibited against me by Mr. Lyster would have fallen to the ground; I had been certain of an acquittal.

As to the jury, my lord, I can conceive some of them to have been very honourable men, and yet prejudiced, much prejudiced; I did not conceive however, that any man would have gone into that box, taking an oath to try me impartially, yet having publicly declared an enmity against me. It was certainly very ingenious in one of the crown lawyers to suppose, that the jurors who used those expressions, might have thought at that time, that I had been guilty of murder, or some heinous crime, and had been disabused before the trial came on, but, without recurring to my general character, that suggestion, in my opinion, falls to the ground, for the conversation was on the subject of the Volunteers; and it is for an address to the Volunteers that I am now prosecuted; I certainly did wish for a revival of the Volunteers, and I did attempt it; I thought they had already done honor to the nation, that they had been acknowledged honourable by the legislature; this I did attempt, if this be a crime. It has been said by one of my prosecutors, that it was not with the jurors, but with their verdict that I was discontented; I ask, what was my conduct when the verdict was delivered in? Did that prove a mere discontent against the verdict? No. I thought it a severe one, unfounded in evidence, but I called for the sentence of the court; I was ready to abide by that sentence; and it was not until my return to Newgate, when I found my prison doors crowded with utter strangers to me, each recapitulating instances of declared partiality in the jurors, and further acts of infamy in the evidence, that I had thoughts of setting aside their verdict.

As to the sheriff, and the circumstance of my not having made some application to the court prior to my affidavit of the day before yesterday, and the question of, when I became acquainted with his partiality, the fact is, that it was with the utmost reluctance I now stood forward, to accuse a man of what must, in my opinion, render him infamous. I well knew that in every public act of my life since I came to this country, trifling as they were, I had been calumniated by him; but that was in his province of editor; he is now become the representative of the executive power—is he not? I thought the station he now holds, would give him some pride, instil some spark of honour into him, and that, relinquishing that conduct and those proceedings which were calculated to procure a sale for his journal, in some corners of

the city, he would consider himself bound to return a jury which should be unsuspected. Was it likely that he did not know of these declarations of the jurors? It is not probable. Before the recognizances were given up, while I was out on bail, the death of a near relation obliged me to go to England, where my attendance was necessary for the arrangement of my private affairs; I returned however at great inconvenience, and some pecuniary loss, to attend this court; yet, during my absence, I was branded by this man as a fugitive; and here permit me to observe, that your lordship, in your recapitulation of the events of this trial, omitted to mention the motion made for me by my friend, Mr. Blennerhasset, that the examinations against me should be forthwith returned: Day after day I had attended the court; the little enquiry I could make, informed me that no such examination had gone up to the grand jury, I believe it was on the last day of the term, or it was not motion day, or something of that kind, and there was no order of the court made. It had been suggested to me by some of my friends, when notice for this trial was served upon me, that I ought to attempt to put it off; but what would have been the consequence? Your lordship has said, that I had called for, that I had provoked this trial, that I had complained it was not brought forward; it is true, I did call for, I did provoke this trial; I have complained that it was not brought forward. I wished to be brought to trial, but I did wish also to be tried by an impartial jury, summoned by an impartial man; such I thought the sheriff of that time* to be, although I was not one of his acquaintance. The very words your lordship used, show why I did not put off my trial. What would then have been said by that Journal, which is perpetually stigmatizing my conduct and vilifying my private character? It would have repeated, what was said in another country, that I was "an infamous wretch, who had fled from the punishment that awaited me."† But still those friends urged me to put off this trial: The sheriff is your enemy—No—I have called for trial, I will trust to his oath of office: though as editor of a newspaper, he has acted thus, yet when bound by oath "to return pannels of persons able and sufficient, and not suspected or procured, and to do justice impartially," (these are merely the words of the oath of a county sheriff,) I hoped he would rise superior to his editorial capacity, and act with justice. Nay, even in my first affidavit, I did not throw out this imputation. As to the sub-sheriff, I know him not, but I am informed that the sheriff himself returned the whole pannel upon this occasion; contrary to the usual custom, as I am informed: Why this was so, I know not; I cannot dive into the breast of any man: God forbid I should be capable of diving into his. My lord, perhaps what I am going to observe may be improper, but I once thought that, intention constituted guilt; I thought I heard from the bench, that my intention did not signify.

LORD CLONMEL.—You have said nothing improper yet, Sir: go on, you do not seem to recollect the idea perfectly.

Mr. HAMILTON ROWAN.—It was not from your lordship.

* Henry Hutton, Esq.

† Vide the Lord Advocate's speech on Mr. Muir's trial, printed by Robertson, Edinburgh.

Mr. JUSTICE DOWNES.—Certainly it is an opinion no judge could hold.

Mr. HAMILTON ROWAN.—I have been mistaken then, it was something like it, it struck me so. As to the paper it has been said to come from a Society of United Irishmen. One of my witnesses was asked was he an United Irishman? I have heard much of United Irishmen, much calumny here and elsewhere; I avow myself to be one, my name has appeared to several of their publications, I glory in the name. On entering that society I took a test, by which I am bound to seek for the emancipation of every class of my fellow-citizens, and to procure, by spreading information, (for that is the only mode a few men assembled in Back-lane can adopt) a reform in the representation of the people*: a reform, the necessity of which has been allowed even in parliament. These are our objects, objects which I am bound to pursue to their completion. As to the paper, I honour the head that conceived it, and I love the hand that penned it. Much stress has been laid upon the words **UNIVERSAL EMANCIPATION** and **REPRESENTATIVE LEGISLATURE**; it may be owing to a want of logical precision in me, but I do not consider these words as carrying the meaning which has been imputed to them. I did imagine that the British constitution was a representative legislature, that the people were represented by the house of commons: that the lords represented the territory, the property; and that the king represented the power of the state, the united force, the power of the whole, placed in his hands for the benefit of the whole. As a person, as a man, I know nothing of the king; I can know nothing of him, except as wielding the force of the nation, to be exercised for the benefit of the nation;† and if ever that force should be misapplied or abused, it then remains for the people to decide in what hands it ought to be placed.‡

I really feel myself in an awkward situation, thus declaring my sentiments, seeing intentions different from those both of the author and myself are fixed upon that paper, for the distribution of which I am persecuted. From my situation, however, having an independent fortune, easy in my circumstances, and with a large family, insurrec-

* It being the interest as well as the intention of the people to have a fair and equal representation, whoever brings it nearest to that, is an undoubted friend to and establisher of the government, and cannot miss the consent and approbation of the community.—*Locke on Government*, sec. 158.

† But yet it is to be observed, that although oaths of allegiance and fealty are taken to him (the king), it is not to him, as supreme legislator, but as supreme executor of the law, made by a joint power of him with others; allegiance being nothing but an obedience according to law, which, when he violates, he has no right to obedience, nor can claim it otherwise than as the public person vested with the power of the law, and so is to be considered as the image, phantom, or representative of the commonwealth, acted by the will of society, declared in its laws; and then he has no will, no power but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades himself, and is but a single private person, without power, and without will, that has any right to obedience; the members owing no obedience but to the public will of the society.—*Locke on Government*, sec. 151.

‡ When king Charles's deluded brother attempted to enslave the nation, he found it was beyond his power: *The people* both could and did resist him; and in consequence of such resistance, obliged him to quit his enterprize and his throne together.—*Blackstone, Public Wrongs*, b. 4, c. 33, f. 5.

tion of any sort would surely be the last thing I could wish for. I ask no favour, but I submit myself to the clemency and the justice of the court, and I trust that whatever may be their sentence, I shall bear it with becoming fortitude.

LORD CLONMEL—I have conferred with my brethren upon what has fallen from you, confessedly in mitigation and with that view. There are two facts you seem to insist upon as new. If it made for you, that Mr. Hasset made the motion you state, I willingly adopt it. If I had known it in giving the history of this case, I should not have omitted that or anything else done in this court. You mentioned that the informations should have been returned, they were returned into the crown office.

MR. ROWAN.—My Lord, I meant they were not returned to the grand jury.

LORD CLONMEL.—The proceeding was not by way of Bill of Indictment, therefore what you desire could not have been adopted. The proceedings here were by information *ex-officio*, and when the informations were lodged in the crown office, which I am instructed to say, was the first day of Hilary Term, 1793, the first day the court sat afterwards, the information was filed and the other proceedings had. There is nothing else that has not been touched upon. As to the meaning of the libel, I owe justice to every man, and here and every where I have said, that no inference can be drawn from any construction in your favour that was omitted. I think I will be justified in saying, that you were well and ably defended by your counsel. Nothing has fallen from you that affected the minds of the court in mitigation, to change the judgment which we have thought proper should be pronounced upon you. I shall not adopt any idea, or suffer any idea to arise in my mind, from what you last let fall from you, to increase that punishment. The judgment of this court will therefore be pronounced, as is the practice in Westminster Hall, by the second judge of the court. It shall be pronounced by my brother Boyd.

MR. JUSTICE BORD.—The sentence of the court is—That you, Archibald Hamilton Rowan, do pay to his Majesty a fine of Five Hundred Pounds, and be imprisoned for two years, to be computed from the 29th of January, 1794, and until that fine be paid; and to find security for your good behaviour for seven years, yourself in the sum of Two Thousand Pounds, and two sureties in One Thousand Pounds each.

The following illustrative dialogue is found in the Autobiography of Archibald Hamilton Rowan, edited by Dr. Drummond, p. 207 :

“I had not been long imprisoned when the following conversation took place between Lord Clonmel and Mr. Byrne, printer, on his advertising my trial for publication, in 1793. I should remark, that he gave me the conversation in his own hand-writing :—

LORD CLONMEL.—“Your servant, Mr. Byrne; I perceive you have advertised Mr. Rowan’s trial.”

BYRNE.—“The advertisement, my Lord, is Mr. Rowan’s; he has selected me as his publisher, which I think an honour, and I hope it will be profitable.”

Lord CLONMEL.—“Take care, Sir, what you do; I give you this caution; for if there are any reflections on the judges of the land, by the eternal G— I will lay you by the heels!”

BYRNE.—“I have many thanks to return your Lordship for your caution; I have many opportunities of going to Newgate, but I have never been ambitious of that honour, and I hope in this case to stand in the same way. Your Lordship knows I have but one principle in trade, which is to make money of it, and that if there be two publications giving different features to the trial I would publish both. There is a trial published by M’Kenzie.”

Lord CLONMEL.—“I did not know that; but say what you may on the subject, if you print or publish what may inflame the mob, it behoves the judges of the land to notice it; and I tell you, by the eternal G—, if you publish or mis-state my expressions, I will lay you by the heels! One of Mr. Rowan’s advocates set out with an inflammatory speech, mis-stating what I said, and stating what I did not say. I immediately denied it, and appealed to the court and the gentlemen in it, and they all contradicted him as well as myself. These speeches were made for the mob, to mislead and inflame them, which I feel my duty to curb. If the publication is intended to abuse me, I don’t value it; I have been so long in the habit of receiving abuse, that it will avail little; but I caution you how you publish it; for if I find anything reflecting on or mis-stating me, I will take care of you.”

BYRNE.—“I should hope Mr. Rowan has too much honour to have anything mis-stated or inserted in his trial that would involve his publisher.”

Lord CLONMEL.—“What! is Mr. Rowan preparing his own trial?”

BYRNE.—“He is, my Lord.”

Lord CLONMEL.—“Oho! oho! that is a different thing. That gentleman would not have been better used by me, standing in the situation he did, if he was one of the princes of the blood.”

BYRNE.—“My Lord, Mr. Rowan being his own printer, you know he will publish his own trial; I stand only as his publisher.”

Lord CLONMEL.—“Even as his publisher, I will take care of you; and I have no objection of this being known.”

BYRNE.—“I return your Lordship many thanks.”

THE REV. WILLIAM JACKSON.

THE following notice of the Rev. William Jackson, from Walker's *Hibernian Magazine*, (May, 1795), is very meagre and unsatisfactory. It is, however, from contemporary authority, and contains probably as much as we now require to know of a man, who played so rash and unsuccessful a game in the politics of our country. Rash and unsuccessful, however, as his conduct was, his mission to Ireland was very important in one point of view. It indicated the quarter from which Irish disaffection might hope for aid and encouragement; and though he was not the first who came to Ireland to tender French assistance, his were the first offers of which the people of Ireland became aware, through the events of his singular and most tragic trial.

"This unfortunate man having been convicted by a jury of his countrymen, of an offence of so unpardonable a nature as high treason, would, most undoubtedly, have suffered the sentence which the law pronounces on so heinous a crime, had it not been for the sudden and premature manner of his dissolution; upon the true cause of which doubts have arisen, even in the minds of medical men. His melancholy catastrophe, and the crime for which he was found guilty having been so uncommon in this country, (no person having been indicted for it for upwards of a century), have justly drawn the attention of the community, in a very ample degree, on this wretched and unfortunate man. Our desire to gratify the curiosity of the public, has induced us to procure such information respecting his origin, and progress through life, as we thought would be acceptable, and which we shall now lay before them.

"The family of this man was very respectable in this country. His father was many years a proctor, and officiated in the prerogative court in Dublin, and maintained a most excellent character. His mother was the daughter of Colonel Gore, of the county Sligo. He was the youngest of four sons, the eldest of whom was Dr. Richard Jackson, an eminent civilian, vicar-general to the late archbishop of Cashel, and an intimate friend of those respectable characters, the late Dr. Ratcliffe, and the Right Hon. Philip Tisdall. At an early age he was sent to the University of Oxford, where he made a rapid proficiency in all branches of scientific and classical knowledge, and

here he commenced a friendship with the Harvey family, which remained unbroken for a long period of time. Having entered into the service of the church, the Earl of Bristol took him into his house as his private chaplain, with a handsome salary annexed ; his circumstances about this time having become much straitened.

“ On the appointment of the Earl of Bristol to the Lord Lieutenancy of this kingdom, a prospect seemed to dawn on Mr. Jackson, which promised to make his future situation in life independent. The Earl sent him here as his private secretary, with a recommendation to the Hon. Barry Maxwell, now Earl of Farnham, in whose house he resided for six months, universally loved and admired for his amiable and prepossessing qualities, his rectitude of conduct, and pleasing conversation. Unfortunately for him, however, his lordship resigned the viceroyalty without once visiting the seat of his government, and Jackson, whom if his lordship came into Ireland, would undoubtedly have been promoted to a bishopric, and might probably be now, not lying in his grave convicted of high treason, but presiding, a dignified ornament to the Established Church of this kingdom, returned to England to his former humble station of private chaplain to his patron.

“ He was now obliged to look to his own acquirements and literary abilities, to enable him to indulge in those luxuries which he had been used to, and could not now do without, he accordingly commenced a party writer against the then ministry. His pamphlets acquired a great deal of celebrity in the political world, and even introduced him to the notice of the late Earl of Chatham, who promised to provide for him ; but it unluckily happened that it was Jackson's fate to meet with nothing but promises from the great, that always turned out abortive to him.

“ He pursued this line of conduct for a number of years in London well known as an author by the name of Parson Jackson, but without ever rising in his circumstances above mediocrity, although it might have been expected from the connexions he had with the family of the noble Earl already mentioned, and, through that connexion, with the Duchess of Kingston, he might have acquired a permanency for the remainder of his life.

“ This celebrated lady last mentioned, was very much attached to Mr. Jackson, and made him her confidant and secretary during her remarkable trial, in the House of Lords of England, for bigamy. He wrote the famous letters that were published in the newspapers in her contest with that Aristophanes of his age, the late Samuel Foote.

“ To enter into a detail of the many vicissitudes of life he went through in the course of his literary labours, would exceed the bounds

we are necessarily prescribed to; we shall, therefore, not trespass further on the reader's patience, but refer to the trial, and conclude, by giving some particulars of the manner of his death, and the circumstances attending it.

"On the 30th of April, being brought up to court to receive judgment, his counsel moved an arrest of it, grounded on some informality in the indictment, and also some other trifling matters, which, however, after being replied to by the Attorney-General, the court did not seem to think of moment sufficient to countenance this motion. During the course of the different opinions being delivered, the prisoner appeared to be extremely ill, and verging to a state of total insensibility, and upon Lord Clonmel's proceeding to pronounce judgment, he was entirely so; his lordship then gave orders that he should be brought back to prison until further orders. However, in the course of a few minutes more he was reported to be dead. His body was not removed from its position in the dock until the next morning, when an inquisition was held on it; and the body being opened by Surgeons Hume and Adrien, the jury brought in their verdict, that 'his death was occasioned by some acrid and mortal matter taken into the stomach; but how, or by whom administered, they did not know.'"

The account of Mr. Jackson is more full in Curran's Life, by his Son; and it is peculiarly interesting from the fact stated by Dr. Madden, in his Lives of the United Irishmen, that it was the casual perusal of a critique on this work, in the Edinburgh Review, that induced Lord Holland to prepare and introduce a bill for a change in the law of treason as applicable to this country. Previous to this act, the 1st and 2nd Geo. IV., c. 24, it was held by the judges in Ireland, that one witness was sufficient to convict, in this country, of high treason. The very salutary protection of a second witness, was extended by Lord Holland's act. The following is the account given of Mr. Jackson's trial by the biographer of Curran:—

"The next state trial of importance in which Mr. Curran was engaged was that of Mr. William Jackson, a case of which some of the attending circumstances were in a high degree singular and affecting.

"Mr. Jackson was a clergyman of the Established Church; he was a native of Ireland, but he had for several years resided out of that country. He spent a part of his life in the family of the noted Duchess of Kingston, and is said to have been the person who conducted that lady's controversy with the celebrated Foote.* At the

* Foote, at the close of his letter to her Grace, observes: "Pray, madam, is not J——n the name of your female confidential secretary?" and afterwards, "That you may never want the benefit of clergy in every emergency, is the wish of Yours," &c.

period of the French Revolution he passed over to Paris, where he formed political connexions with the constituted authorities. From France he returned to London, in 1794, for the purpose of procuring information as to the practicability of an invasion of England, and was thence to proceed to Ireland on a similar mission. Upon his arrival in London, he renewed an intimacy with a person named Cockayne, who had formerly been his friend and confidential attorney. The extent of his communications, in the first instance, to Cockayne, did not exactly appear; the latter, however, was prevailed upon to write the directions of several of Jackson's letters, containing treasonable matters, to his correspondents abroad: but in a little time, either suspecting or repenting that he had been furnishing evidence of treason against himself, he revealed to the British minister, Mr. Pitt, all that he knew or conjectured relative to Jackson's objects. By the desire of Mr. Pitt, Cockayne accompanied Jackson to Ireland, to watch and defeat his designs; and as soon as the evidence of his treason was mature, announced himself as a witness for the crown. Mr. Jackson was accordingly arrested, and committed to stand his trial for high treason.

"Mr. Jackson was committed to prison in April, 1794, but his trial was delayed, by successive adjournments, till the same month in the following year. In the interval, he wrote and published a refutation of Paine's *Age of Reason*, probably in the hope that it might be accepted as an atonement.* He was convicted, and brought up for judgment on the 30th of April, 1795.

* Examples of honourable conduct, no matter by whom displayed, are heard with pleasure by every friend to human nature. Of such, a very rare instance was given by this gentleman during his imprisonment. For the whole of that period he was treated with every possible indulgence; a fact so creditable to the Irish government, that it would be unjust to suppress it. Among the other acts of lenity extended to him, was a permission to enjoy the society of his friends. A short time before his trial, one of these remained with him to a late hour of the night: when he was about to depart, Mr. Jackson accompanied him as far as the place where the gaoler usually waited upon such occasions, until all his prisoners' visitors should have retired. They found the gaoler in a profound sleep, and the keys of the prison lying beside him. "Poor fellow!" said Mr. Jackson, taking up the keys, "let us not disturb him; I have already been too troublesome to him in this way." He proceeded with his friend to the outer door of the prison, which he opened. Here the facility of escaping naturally struck him,—he became deeply agitated; but after a moment's pause, "*I could do it*," said he, "but what would be the consequences to you, and to the poor fellow who has been so kind to me? No! let me rather meet my fate." He said no more, but locking the prison door again, returned to his apartment. It should be added, that the gentleman, out of consideration for whom such an opportunity was sacrificed, gave a proof upon this occasion that he deserved it. He was fully aware of the legal consequences of aiding in the escape of a prisoner committed under a charge of high treason, and felt that, in the present instance, it would have been utterly impossible for him to disprove the circumstantial evidence that would have appeared against him; yet he never uttered a syllable to dissuade his unfortunate friend. He, however, considered the temptation to be so irresistible, that, expecting to find the prisoner, upon farther reflection, availing himself of it, he remained all night outside the prison door, with the intention, if Mr. Jackson should escape, of instantly flying from Ireland.

"It is at this stage of the proceedings that the case of Jackson becomes terribly peculiar. Never, perhaps, did a British court of justice exhibit a spectacle of such appalling interest as was witnessed by the King's Bench of Ireland upon the day that this unfortunate gentleman was summoned to hear his fate pronounced. He had a day or two before made some allusions to the subject of suicide. In a conversation with his counsel in the prison, he had observed to them, that his food was always cut in pieces before it was brought to him, the gaoler not venturing to trust him with a knife or fork. This precaution he ridiculed, and observed, 'that the man who feared not death, could never want the means of dying, and that as long as his head was within reach of the prison-wall, he could prevent his body's being suspended to scare the community.' At the moment, they regarded this as a mere casual ebullition, and did not give it much attention.

"On the morning of the 30th of April, as one of these gentlemen was proceeding to court, he met in the streets a person warmly attached to the government of the day. The circumstance is trivial, but it marks the party spirit that prevailed, and the manner in which it was sometimes expressed: 'I have (said he) just seen your client, Jackson, pass by on his way to the King's Bench to receive sentence of death. I always said he was a coward, and I find I was not mistaken; his fears have made him sick—as the coach drove by, I observed him, with his head out of the window, vomiting violently.' The other hurried on to the court, where he found his client supporting himself against the dock. His frame was in a state of violent perturbation, but his mind was still collected. He beckoned to his counsel to approach him, and making an effort to squeeze him with his damp and nerveless hand, uttered in a whisper, and with a smile of mournful triumph, the dying words of Pierre,

"We have deceived the senate."

"The prisoner's counsel having detected what they conceived to be a legal informality in the proceedings, intended to make a motion in arrest of his judgment; but it would have been irregular to do so until the counsel for the crown, who had not yet appeared, should first pray the judgment of the court upon him. During this interval, the violence of the prisoner's indisposition momentarily increased, and the chief-justice, Lord Clonmel, was speaking of remanding him, when the attorney-general came in, and called upon the court to pronounce judgment upon him. Accordingly, 'the Rev. William Jackson was set forward,' and presented a spectacle equally shocking and affecting. His body was in a state of profuse perspiration; when his hat was

removed, a dense steam was seen to ascend from his head and temples ; minute and irregular movements of convulsion were passing to and fro upon his countenance ; his eyes were nearly closed, and, when at intervals they opened, discovered by the glare of death upon them, that the hour of dissolution was at hand. When called on to stand up before the court, he collected the remnant of his force to hold himself erect ; but the attempt was tottering and imperfect : he stood rocking from side to side, with his arms, in the attitude of firmness, crossed over his breast, and his countenance strained by a last proud effort, into an expression of elaborate composure. In this condition he faced all the anger of the offended law, and the more confounding gaze of the assembled crowd. The clerk of the crown now ordered him to hold up his right hand. The dying man disentangled it from the other, and held it up, but it instantly dropped again. Such was his state, when, in the solemn simplicity of the language of the law, he was asked, ‘ What he had now to say, why judgment of death and execution thereon should not be awarded against him, according to law ? ’ Upon this Mr. Curran rose, and addressed some arguments to the court in arrest of judgment. A legal discussion of considerable length ensued. The condition of Mr. Jackson was all this while becoming worse. Mr. Curran proposed that he should be remanded, as he was in a state of body that rendered any communication between him and his counsel impracticable : Lord Clonmel thought, it lenity to the prisoner, to dispose of the question as speedily as possible. The windows of the court were thrown open to relieve him, and the discussion was renewed ; but the fatal group of death-tokens were now collecting fast around him ; he was evidently in the final agony. At length, while Mr. Ponsonby, who followed Mr. Curran, was urging further reasons for arresting the judgment, their client *sunk in the dock.*”

It was found to be impossible to pronounce the sentence of death on the unfortunate gentleman. He had taken poison, and his voluntary act anticipated the operation of justice. Mr. Curran proceeds to comment upon the law as it was then expounded by the bench. He says, that the trial, as a matter of legal and constitutional interest, “ established a precedent of the most vital (Englishmen would say, of the most fatal) importance to a community having any pretensions to freedom. Against the authority of Coke, and the reasoning of Blackstone, and against the positive reprobation of the principle by the English legislature, it was solemnly decided in Jackson’s case, that in Ireland one witness was sufficient to convict a prisoner upon the charge of high treason—‘ that the breath which cannot even taint the character of a man in England, shall in Ireland blow him from the

earth.* This decision has ever since been recognized and acted upon, to the admiration of that class of politicians (and they have abounded in Ireland) who contend, that in every malady of the state, blood should be plentifully drawn; and to the honest indignation of men of equal capacity and integrity, who consider that, without reason or necessity, it establishes an odious distinction, involving in it a disdain of what Englishmen boast as a precious privilege, alluring accusations upon the subject, and conferring security and omnipotence upon the informer.

“It is a little singular to observe, in the state trials that followed, the effects of such a law, and to what a class of witnesses it familiarized the Irish courts of justice. From the event it would appear, that there was as much of prophecy, as of constitutional zeal, in Mr. Curran’s efforts to prevent its establishment, and afterwards to produce its repeal. To say nothing but of a few of those cases in which he acted as counsel, the fate of Jackson, M’Cann, Byrne, Bond, the Sheareses, Finney, rested almost entirely on the credibility of a single witness. All of these, except the last, were convicted; and that they were involved in the projects for which they were tried and suffered, is now a matter of historical notoriety. Few, it is hoped, will maintain the dangerous principle, that the subject should have the inducement of impunity to conspire against the state—such a doctrine would bring instant ruin upon any society; but every friend to constitutional law will distinguish between the evidence that precedes a conviction and that which follows; he will remember that the forms of trial, and the legality of evidence, have not been established for the solitary purpose of punishing the guilty; that their most precious use is for the security of innocence; and that, if fore-judging the real offender, we too hastily deprive him of a single privilege of defence, we establish a perilous rule that survives the occasion and extends beyond it, and of which those who never offended may hereafter be the victims. If the trials of the individuals just named be considered with a reference to this view, they will be found to contain matter of important reflection. We may not feel justified in lamenting their personal fate—in giving to their memories ‘the traitorous humanity and the rebel tear,’ yet we cannot but be shocked at the characters of the persons by whose evidence they were carried off. These were, all of them, men of blighted reputation. It was not merely that they had been accomplices in the crimes which they came to denounce; and that, finding the speculation dangerous and unprofitable, they endeavoured to retrieve their credit and circumstances, by setting up as ‘loyal apostates.’

* Mr. Curran’s defence of Jackson.

Deeper far was, if not their legal offence, their moral depravity. Dreadful were the confessions of guilt, dishonour, and irreligion, extorted from these wretches. If their direct examination produced a list of the prisoners' crimes, as regularly did their cross-examination elicit a darker catalogue of their own. In the progress of their career from participation to discovery, all the tender charities of life were abused—every sacred tie rent asunder. The agent, by the semblance of fidelity, extracted the secret of his client and his friend, and betrayed him!* The spy resorted to the habitation of his victim, and, while sharing his hospitality, and fondling his children, was meditating his ruin.† Here was to be seen the wild atheist, who had gloried in his incredulity, enjoying a lucid interval of faith, to stamp a legal value on his oath‡—there the dishonest dealer, the acknowledged perjurer, the future murderer.§”

The remarks of the Edinburgh Review are forcible and just, and had the good fortune of giving rise to a new and safer system. On reading the Edinburgh Review, Lord Holland felt the inequality and injustice of the law, and, with his characteristic promptitude, introduced a bill to extend the provisions of the 7th Wm. III., c. 3, to Ireland.

“This case, however, is chiefly remarkable for having settled the point, that in Ireland a man may be convicted of treason on the testimony of a single witness. When the English statutes, requiring two, were adopted in that country, those declaratory clauses were omitted; and the question came therefore to be, whether, on the old common law, two witnesses had not always been necessary for such a conviction. Lord Coke had given a clear opinion in the affirmative; but Foster and Hawkins thought differently. There had been no trial for treason in Ireland for upwards of a century; and the point had

* Jackson's Trial.

† Jackson's Trial and the Trial of the Sheareses. A few days before Cockayne had openly announced himself as an informer, he was invited to accompany Jackson to dine with a friend of the latter. After dinner, as soon as the wine had sufficiently circulated, Jackson, according to a previous suggestion from Cockayne, began to sound the political dispositions of the company, and particularly addressed himself to a gentleman of rank who sat beside him, and who, there has been subsequent reason to believe, was deeply involved in the politics of the time. During the conversation, Cockayne appeared to have fallen asleep; but, in the midst of it, the master of the house was called out by his servant, who informed him, that he had observed something very singular in Mr. Jackson's friend—“he has his hand,” said the servant, “over his face, and pretends to be asleep; but when I was in the room just now, I could perceive the glistening of his eye through his fingers.” The gentleman returned to his guests; and, whispering to him who was conversing with Jackson to be cautious in his language, probably prevented some avowal which might eventually have cost him his life. Upon such trivial accidents do the fates of men depend in agitated times!

‡ Trial of the Sheareses.

§ Finney's Trial; and other State Trials of 1798.

never before occurred. It was determined, as we have already stated, in conformity with the more recent authorities; though nothing can be more revolting than such an anomaly, in the constitutional law of two united kingdoms—and nothing more disgusting than the scenes to which this decision speedily gave rise in the least fortunate of the two. The principle, it is manifest, cannot possibly be right in both: and the English prisoner must either have too many privileges, or the Irish too few. Nor is it possible to listen to the suggestion, that, from the state of society in Ireland, it was necessary to give the Crown this additional security:—For the same disordered or depraved state of morality which renders treason probable, is still more likely to produce false accusations; and whoever will read the state trials, either in England or Ireland, will find that treason and perjury have always been contemporary crimes, and that the dangers of the crown and of the subject have uniformly been reciprocal.”

Jackson's funeral was well attended by numbers of the United Irishmen. Barrington says, “he had a splendid funeral, and, to the astonishment of Dublin, it was attended by several members of parliament, and barristers! A Mr. Tighe, Counsellor Richard Guinness, (Sir Jonah might have added the two Sheareses, also members of the profession), were amongst them.” It is unnecessary to remark, that Barrington was too consistent a patriot to be of the number of those who, as was said in the House of Commons,* “paid the honours of treason” to the unfortunate Jackson.

He is buried in the churchyard of St. Michan's, where also are interred the remains of Oliver Bond, and of Henry and John Sheares.

* Debates of the Irish House of Commons, June, 1795.

. . .

PROCEEDINGS
IN THE
COURT OF KING'S BENCH, IN IRELAND,
AGAINST
THE REV. WILLIAM JACKSON,
ON AN INDICTMENT
CHARGING HIM WITH HIGH TREASON.

34 AND 35 GEO. III. A.D. 1794, 1795.

KING'S BENCH,

MONDAY, June 2, 1794.

Mr. M'NALLY, on the part of the Rev. William Jackson, a prisoner in his Majesty's goal of Newgate, moved the court, that Mr. Keane, the prisoner's agent, might have access to the prisoner, for the purpose of receiving instructions to prepare for his defence. Mr. Jackson was committed upon the 28th of April, 1794, by virtue of a warrant from Lord Clonmel, Chief-Justice of the King's Bench, upon a charge of High Treason; Mr. Keane was refused access to Mr. Jackson, who was denied the use of pen, ink and paper, as Mr. Keane swears he is informed and believes.

Mr. ATTORNEY-GENERAL.—I have no objection that every reasonable access should be had to the prisoner; but care must be taken that no improper use be made of it. The constant practice here and in England is to admit of access at reasonable times; but persons are not to go in or come out without being searched, if necessary, so as that no opportunity be given of conveying instruments that might assist an escape, and also that no communications may be had with the King's enemies, that being the charge against the prisoner, that he communicated with the King's enemies for the purpose of levying war against this kingdom.

The counsel for the prisoner being satisfied with this declaration of Mr. Attorney-General, took nothing by the motion.

MONDAY, 30th June, 1794.

A bill of indictment having been preferred against the Rev. William Jackson, before the Term Grand Jury for the city of Dublin, and they having returned it a true bill, Mr. Jackson was this day brought to the bar of the King's Bench, and having prayed that counsel might be assigned him, he was desired by the Court to name his counsel; he named John Philpot Curran, and George Ponsonby, Esquires, two of his Majesty's counsel, who were assigned by the Court to be counsel for the prisoner.

Clerk of the Crown.—William Jackson, hold up your right hand.

Mr. Jackson accordingly held up his right hand and was arraigned upon the following indictment.

County of the city of } “THE jurors for our Lord the King upon their
Dublin, to wit. } oath present, that an open and public war on
 the third day of April, in the thirty-fourth year of the reign of our Lord George the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and soforth, and long before, and ever since, hitherto by land and by sea, was, and yet is carried on and prosecuted by the persons exercising the powers of government in France against our most serene, illustrious, and excellent Prince, our said Lord the now King; and that William Jackson, late of the parish of St. Andrew, in the city of Dublin, and county of the said city, clerk, a subject of our said Lord the King, of his kingdom of Ireland, well knowing the premises, but not having the fear of God in his heart, nor weighing the duty of his allegiance, and being moved and seduced by the instigation of the devil, as a false traitor against our said Lord the now King, his supreme, true, lawful and undoubted Lord, the cordial love and true and due obedience, which every true and dutiful subject of our said present Sovereign Lord the King towards him our said Lord the King should bear, wholly withdrawing, and contriving, and with all his strength intending the peace and common tranquillity of this kingdom of Ireland to disquiet, molest, and disturb, and the government of our said present Sovereign Lord the King of this kingdom of Ireland to change, subvert and alter, and our said Lord the King from the royal state, title, honour, power, imperial crown, and government of this his kingdom of Ireland to depose and deprive, and our said Lord the present King to death and final destruction to bring and put, he the said William Jackson, on the said third day of April, in the said thirty-fourth year of the reign of our said Lord the King, and on divers other days and times, as well before as after that day, at the parish of St. Andrew aforesaid, in the city of Dublin aforesaid, and county of the said city, with force and arms falsely, wickedly and traitorously, did compass, imagine and intend the said Lord the King, then and there his supreme, true and lawful Lord, of and from the royal state, crown, title, power and government of this his realm of Ireland, to depose and wholly deprive, and the same Lord the King to kill and bring and put to death: And that to fulfil, perfect and bring to effect his most evil and wicked treason, and treasonable imaginations and compassings aforesaid, he the said William Jackson as such false traitor as aforesaid, during the said war between our said Lord the King, and the said persons exercising the

powers of government in France, to wit, on the third day of April in the thirty-fourth year aforesaid, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin aforesaid, with force and arms, falsely, maliciously and traitorously did come to and land in this kingdom of Ireland, that is to say, at Dublin aforesaid, for the purpose of procuring and obtaining information and accounts of, and concerning the situations and dispositions of the subjects of our said Lord the King of his kingdom of Ireland, and of sending and causing to be sent such information and accounts to the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, with intent to aid and assist the said enemies of our said Lord the King, against our said Lord the King in the war aforesaid: And that afterwards and during the said war between the said Lord the King and the said persons exercising the powers of government in France, to wit, on the twenty-first day of April in the said thirty-fourth year of the reign of our said Lord the King, and on divers other days, as well before as after that day, with force and arms, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin aforesaid, the said William Jackson, as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, did, with divers other false traitors, whose names are to the said jurors unknown, falsely, wickedly and traitorously meet, propose, consult, conspire, confederate and agree to raise, levy and make insurrection, rebellion and war within this kingdom of Ireland, against our said Lord the King, and to cause, procure, and incite the said persons exercising the powers of government in France, being enemies of our said Lord the King as aforesaid, to invade this kingdom of Ireland with ships and armed men, and to carry on the said war against the said Lord the King, within this kingdom of Ireland. And that during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the said twenty-first day of April, in the thirty-fourth year aforesaid, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin aforesaid, the said William Jackson, as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, wickedly and traitorously did incite, exhort and counsel, and as far as in him lay, endeavour to move and persuade one Theobald Wolfe Tone to travel and go into parts beyond the seas to represent to the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, that divers subjects of our said Lord the King of his kingdom of Ireland were dissatisfied with the government of our said Lord the King of his kingdom of Ireland, and to incite, move, and persuade the said persons exercising the powers of government in France, and being enemies of our said Lord the King to invade the kingdom of Ireland, and to raise and make war therein against our said Lord the King, and that during the said war between the said Lord the King and the said persons exercising the powers of government in France to wit, on the same day and year last aforesaid, and on divers other days as well before as after the said last mentioned day, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin afore-

said, the said William Jackson as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes, with force and arms, falsely, wickedly and traitorously did consult, combine, conspire, confederate and agree with divers other persons whose names are to the said jurors unknown, to procure and provide a person to travel and go into parts beyond the seas to represent to the said persons exercising the powers of government in France and being enemies of our said Lord the King as aforesaid, that divers subjects of our said Lord the King of his Kingdom of Ireland were dissatisfied with the government of our said Lord the King of his kingdom of Ireland, and to incite, move and persuade the said persons exercising the powers of government in France, and being enemies of our said Lord the King to invade this kingdom of Ireland, and to raise and make war therein against our said Lord the King : And that during the said war between our said Lord the King and the persons exercising the powers of government in France to wit on the same day and year last aforesaid, and on divers other days as well before the said last mentioned day as after, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin aforesaid, the said William Jackson as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, wickedly and traitorously did meet, consult, combine, conspire, confederate and agree with divers other persons whose names are to the said jurors unknown ; that some person should be sent into France to notify and reveal to the said persons exercising the powers of government in France, then and yet enemies of our said Lord the King, the state, circumstances, and condition of this his kingdom of Ireland ; and the dispositions and inclinations of our said Lord the King's subjects therein, and to treat and negotiate with, and to incite, stir up and encourage the said persons exercising the powers of government in France, then and yet enemies of our said Lord the King as aforesaid to invade this kingdom of Ireland, and to change, alter and subvert the government of our said Lord the King of his said kingdom of Ireland. And that during the said war between our said Lord the King and the said persons exercising the powers of government in France to wit, on the said twenty-first day of April in the thirty-fourth year aforesaid, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin aforesaid ; he the said William Jackson as such false traitor as aforesaid in prosecution of his said treason and treasonable purposes aforesaid, with force and arms, falsely, wickedly, and traitorously did compose and write, and cause to be composed and written, a certain letter to be sent to one William Stone in London, in the kingdom of Great Britain ; and in and by the said letter the said Wm. Jackson, falsely, wickedly, and traitorously did direct and instruct the said William Stone, to reveal and disclose to the said persons exercising the powers of government in France, and to the people in France, then and yet enemies of our said present Lord the King, a scheme and intention of the said William Jackson and other false traitors to our said Lord the King, to send a person from this kingdom of Ireland to satisfy and convince the said persons exercising the powers of government in France so being enemies of our said Lord the King as aforesaid, of divers of his said Majesty's subjects in Ireland being

ready to aid and assist the said enemies of our said Lord the King, and to treat and negociate with the said persons exercising the powers of government in France, then and yet enemies of our said Lord the King for an invasion of the said kingdom of Ireland, but that the private affairs of the person intended to be sent would not permit him to go, and therefore he the said William Jackson would send a statement of the situation and disposition of the inhabitants of the said kingdom of Ireland, drawn up by a certain person to the jurors unknown in order to be sent and delivered to the said persons exercising the powers of government in France then and yet enemies of our said Lord the King: And that during the said war between our said Lord the King and the said persons exercising the powers of government in France to wit, on the twenty-fourth day of April in the thirty-fourth year aforesaid, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin aforesaid, the said William Jackson as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, maliciously, and traitorously did compose and write and cause to be composed and written, a certain other letter to be sent to the said William Stone in London, in the Kingdom of Great Britain, requesting the said William Stone to cause and procure to be notified and declared to a certain person then being in foreign parts beyond the seas, but whose name is to the said jurors unknown, that a statement of the situation and dispositions of divers of the subjects of our said Lord the King of his kingdom of Ireland, would be forthwith sent by him the said William Jackson to be communicated to the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, to convince them of the readiness of such last mentioned subjects of our said Lord the King, to aid and assist the said enemies of our said Lord the King in an invasion of this kingdom of Ireland: And that during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the same day and year last aforesaid, at the parish of St. Andrew, aforesaid, in the city and county of the city of Dublin aforesaid, the said William Jackson as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, wickedly and traitorously delivered and caused and procured to be delivered the said letters into the office of the post at Dublin, aforesaid, to be from the said office conveyed and delivered to the said William Stone: And that during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the same day and year last aforesaid, at the parish of St. Andrew, aforesaid, in the city and county of the city of Dublin, aforesaid, the said William Jackson as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, maliciously and traitorously did compose and write and cause and procure to be composed and written a certain other letter to be sent to Benjamin Beresford, in foreign parts beyond the seas, requesting the said Benjamin Beresford to inform a certain other person then also living in foreign parts beyond the seas, but whose

name is to the said jurors unknown, that an account of the situation and dispositions of divers of the subjects of our said Lord the King of his kingdom of Ireland, was sent for the said last mentioned person unknown to be communicated to the said persons exercising the powers of government in France and being enemies of our said Lord the King as aforesaid: And that afterwards and during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the same day and year last aforesaid at the parish of St. Andrew, aforesaid, in the city and county of the city of Dublin, aforesaid, the said William Jackson as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, wickedly and traitorously delivered and caused and procured to be delivered the said last mentioned letter into the said office of the post at Dublin, aforesaid, to be from the said office conveyed and delivered to the said Benjamin Beresford: and that during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the same day and year last aforesaid, at the parish of St. Andrew, aforesaid, in the city and county of the city of Dublin, aforesaid, the said William Jackson as such false traitor as aforesaid and in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, maliciously, and traitorously did compose and write and cause and procure to be composed and written divers accounts and instructions in writing to publish and declare to the said persons exercising the powers of government in France, and being enemies of our said Lord the King for the purpose of inciting the said persons to invade this kingdom of Ireland, and to raise and make war therein against our said Lord the King, divers matters and things of and concerning the people of this kingdom of Ireland, and amongst other things that the Dissenters were steady republicans, devoted to liberty, and through all the stages of the French revolution had been enthusiastically attached to it, that the peasantry of Ireland manifested a degree of discontent by various insurrections, that there was no where a higher spirit of aristocracy than in all the privileged orders, the clergy and the gentry of Ireland down to the very lowest, to countervail which there appeared a spirit rising in the people which never existed before but which was spreading most rapidly as appeared by the Defenders as they were called and other insurgents, that in Ireland the name of England and her power was universally odious, save with those who had an interest in maintaining it, a body however only formidable by property and situation, but which the first convulsion would level in the dust, that on the contrary the great bulk of the people (meaning the people of Ireland,) would be ready to throw off the yoke (meaning the government of our said Lord the King in that country) if they saw any force sufficiently strong to resort to for defence till arrangements could be made, that the government of Ireland was only to be looked upon as a government of force, that the moment a superior force appeared, it would tumble at once, as being founded neither in the interests nor in the affections of the people; that there seemed little doubt but an invasion (meaning an invasion of Ireland, by the said

enemies of our said Lord the King) in sufficient force, would be supported by the people (meaning the people of Ireland) that there was scarcely any army in the country (meaning in Ireland) and that the militia, (meaning the militia of Ireland) would to a moral certainty refuse to act if they should see such a force as they could look to for support: And also that the said William Jackson as such false traitor as aforesaid, during the said war between our said Lord the King and the said persons exercising the powers of government in France to wit, on the same day and year last aforesaid, at the parish of Saint Andrew aforesaid, in the city and county of the city of Dublin aforesaid in further prosecution of his treason and treasonable purposes aforesaid with force and arms did falsely, wickedly and traitorously compose and write, and cause and procure to be composed and written divers other accounts and instructions in writing of and concerning the people of this kingdom of Ireland to incite, move and persuade the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, to invade this kingdom of Ireland and to raise and make war therein against our said Lord the King, all which said accounts and instructions in writing herein before mentioned to have been written and composed, and caused and procured to be written and composed by the said William Jackson, he the said William Jackson as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, afterwards and during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the same day and year last aforesaid at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely, wickedly and traitorously delivered and caused and procured to be delivered into the said office of the post at Dublin aforesaid, to be from thence conveyed into foreign parts beyond the seas, and there, to wit, in foreign parts beyond the seas to be delivered to certain persons on the behalf and for the use of the said persons exercising the powers of government in France and being enemies of our said Lord the King as aforesaid, for the information, encouragement and assistance of the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid: And that during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the city and county of the city of Dublin, the said Wm. Jackson as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid with force and arms falsely, wickedly and traitorously delivered and caused and procured to be delivered into the said office of the post at Dublin aforesaid, to be from thence conveyed into foreign parts beyond the seas and delivered to the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, for the purpose of inciting the said persons to invade the kingdom of Ireland and to raise and make war therein against our said Lord the King, divers other accounts and instructions in writing of and concerning the people of this kingdom of Ireland, whereof he the said William Jackson then

and there well knew the contents, purporting and containing therein amongst other things that the Dissenters were steady republicans devoted to liberty, and through all the stages of the French revolution had been enthusiastically attached to it; that the peasantry of Ireland manifested a degree of discontent by various insurrections, that there was no where a higher spirit of aristocracy than in all the privileged orders, the clergy and the gentry of Ireland down to the very lowest, to countervail which there appeared a spirit rising in people which never existed before, but which was spreading most rapidly as appeared by the Defenders, as they were called, and other insurgents; that in Ireland the name of England and her power was universally odious, save with those who had an interest in maintaining it; a body however only formidable from situation and property, but which the first convulsion would level in the dust; that on the contrary, the great bulk of the people (meaning the people of Ireland) would be ready to throw off the yoke, if they saw any force sufficiently strong to resort to for defence till arrangements could be made; that the government of Ireland was only to be looked upon as a government of force: that the moment a superior force appeared, it would tumble at once as being founded neither in the interests nor in the affections of the people; that there seemed little doubt but an invasion (meaning an invasion of Ireland by the said enemies of our said Lord the King) in sufficient force, would be supported by the people, (meaning the people of Ireland,) that there was scarcely any army in the country (meaning in Ireland,) and that the militia (meaning the militia of Ireland,) would to a moral certainty refuse to act if they should see such a force as they could look to for support: And also that the said William Jackson as such false traitor as aforesaid during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the same day and year last aforesaid, at the parish of St. Andrew aforesaid, in the city and county of the city of Dublin aforesaid in further prosecution of his treason and treasonable purposes aforesaid, with force and arms, falsely, wickedly and traitorously delivered into the said office of the post at Dublin aforesaid, to be from thence carried into foreign parts beyond the seas, and delivered to the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, divers other accounts and instructions in writing, of and concerning the people of this kingdom of Ireland, whereof he the said William Jackson then and there well knew the contents, to incite, move and persuade the said persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, to invade this kingdom of Ireland, and to raise and make war therein, against our said Lord the King, against the duty of the allegiance of him the said William Jackson, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

And the said jurors for our said Sovereign Lord the King, upon their oath, further present; that an open and public war on the said third day of April, in the thirty-fourth year of the reign of our said Sovereign Lord George the Third, by the Grace of God of Great

Britain, France and Ireland, King, Defender of the Faith, and so forth, and long before and ever since, hitherto by land and by sea was and yet is carried on and prosecuted by the said persons, exercising the powers of government in France, against our most serene, illustrious and excellent Prince, our said Lord the now King; and that the said William Jackson, a subject of our said Lord the King of his kingdom of Ireland, well knowing the premises, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil; as a false traitor against our most serene, illustrious and excellent Prince, George the Third, now King of Ireland, and so forth; and contriving and with all his strength intending the peace and common tranquillity of this kingdom of Ireland to disquiet, molest, and disturb, and the government of our said present Sovereign Lord the King of this kingdom of Ireland, to change, subvert and alter; he the said William Jackson, during the war aforesaid, to wit on the said third day of April, in the thirty-fourth year aforesaid, and on divers other days and times, as well before as after that day, with force and arms at the said parish of St. Andrew in the city of Dublin aforesaid, and county of the said city, unlawfully and traitorously was adhering to, and aiding and comforting the said persons, exercising the powers of government in France, and then being enemies of our said present Sovereign Lord the King as aforesaid; that in the prosecution, performance and execution of the said traitorous adhering of the said William Jackson to the said persons exercising the powers of government in France then being enemies of our said Lord the present King afterwards and during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the said third day of April, in the thirty-fourth year aforesaid, at the parish of St. Andrew aforesaid, in the city and the county of the city of Dublin aforesaid, he the said William Jackson as such false traitor as aforesaid with force and arms falsely, maliciously and traitorously did come to and land in this kingdom of Ireland that is to say at Dublin aforesaid, for the purpose of procuring and obtaining information and accounts of and concerning the situation and disposition of the subjects of our said Lord the King of his kingdom of Ireland, and of sending and causing to be sent such information and accounts to the said persons exercising the powers of government in France and being enemies of our said Lord the King as aforesaid, with an intent to aid and assist the said enemies of our said Lord the King against our said Lord the King in the war aforesaid."

[The indictment then proceeds to enumerate the same overt acts mentioned in support of the first charge.]

Clerk of the Crown.—How say you, William Jackson, are you guilty of the treason whereof you stand indicted, and arraigned or not?

Mr. JACKSON.—Not guilty.

Clerk of the Crown.—Culprit, how will you be tried?

Mr. JACKSON.—By God and my country.

Clerk of the Crown.—God send you a good deliverance.

Mr. ATTORNEY-GENERAL.—I am now humbly to move your Lord-

ships, that a day may be appointed for the trial of the prisoner. If the prisoner be not ready for his trial this term, I have no objection to its being postponed until the next term.

Mr. CURRAN.—I have been assigned by the court as counsel for the prisoner. It is rather the duty of my client in his present situation, to wait until he is apprized of what the inclination of the court may be, before he expresses his wish upon the subject.

Lord CLONMEL, Chief-Justice.—Undoubtedly the first duty of this court is to dispose of the crown business, which may come before it.

Mr. CURRAN.—If my client is to understand that the inclination of the court is to appoint a day for the trial in this term, it will be necessary for me to address a word or two to the court. I make no difficulty of saying in this case, that being concerned as counsel for a man in a perilous situation, I cannot think of wasting any claim he may have to indulgence. It is better he should submit to any order made by the court, than urge any application from himself.

Lord CLONMEL, Chief-Justice.—I do not exactly see the object of this address.

Mr. CURRAN.—I mean to enquire whether the court wish to try the prisoner this term.

Lord CLONMEL, Chief-Justice.—The court have no wish about it. Their first duty is to go through the business.

Mr. ATTORNEY-GENERAL.—I will put an end to this, I move to appoint the first return day in the next term for the trial.

Lord CLONMEL, Chief-Justice.—The prisoner is in a country where he will have every possible advantage to prepare for his trial.

Friday, the 7th of November, being appointed for his trial, he was remanded to Newgate without any objection.

FRIDAY, 7th November. 1794.

The Court having sat, Mr. JACKSON was put to the bar, and the Sheriff of the city of Dublin was ordered to return his *venire*, which he did, and the Clerk of the Crown called it over.

Mr. CURRAN.—This trial was appointed for this day. It is more becoming, not to wait to see whether the counsel for the crown will say anything as to putting off the trial, but to state how my client is circumstanced. He has been in goal for many months. He was arraigned last term, when he pleaded, and the court were pleased to appoint this day for his trial. All the interval he has employed in the most deliberate preparations for his defence. Though a native of this country, his life has been spent out of it. He sent his wife to England to attend upon such witnesses as he thought necessary for the trial. She spent part of the summer in England where an agent was employed, and Mr. Jackson himself sent another upon the same business. These circumstances are ready to be proved by affidavit. Mrs. Jackson remained in England some time, and came back to prepare for the necessary attendance. Some property, which was the joint property of both, has been sold for about one-tenth of its value, to defray the expense of bringing over witnesses, who cannot be

compelled to attend by any process of this court, and therefore their demands must be complied with.*

LORD CLONMEL, Chief-Justice.—The object of your application is, that the prisoner is not ready for his trial.

MR. CURRAN.—It is: the application could not be made before, because the court did not sit, and the prisoner had expected that the witnesses would arrive. A considerable sum of money was paid to defray their expenses, and certain matters of record are to be brought upon a security of £500 for their being returned. Mr. Nailor, an English agent, has them in his possession, and he was expected here by this time. He is a material witness, and his arrival with the others was expected:—they are not yet arrived. There appeared a paragraph in the English newspapers, that this trial was put off to the 21st instant. Mr. Jackson states that his witnesses might be led into error by this publication, which was made without any connivance, or privity of his. There is another circumstance: In the last Term, the court assigned the prisoner two counsel; Mr. Ponsonby was one of them; he is in England; his arrival was expected by this time: he is not yet arrived, and the consequence is, that Mr. Jackson will be deprived of the aid of one of his counsel. As to the comparative aid of others, it is unnecessary to compute it: the court will feel the weight of the circumstance I have mentioned. The prisoner swears he cannot with safety to his life go to trial without his witnesses; he has done everything to procure their attendance, and does expect them and his counsel upon any future day to which the court shall think proper to postpone the trial.

LORD CLONMEL, Chief-Justice.—In this term?

MR. CURRAN.—He instructs me to speak with the utmost candour. His wish is to be tried; he means no artificial delay whatever.

LORD CLONMEL, Chief-Justice.—If this affidavit be not sworn, let it be sworn now; when it is, let it be read.

Three affidavits were then sworn; one by the prisoner, a second by his wife, a third by his agent, setting forth the endeavours which had been used to procure the attendance of witnesses, as stated by Mr. Curran.

LORD CLONMEL, Chief-Justice.—What time do you desire?

MR. CURRAN.—He would wish to have the trial this term if possible to avoid expense. The witnesses may be on their way, and if a day be appointed, it is possible they may not be here on that day. Mr. Jackson feels the necessary respect for the court; but he would rather wish to postpone the trial until the next term, than have any day named in this, lest there might be a disappointment, in which case, it would be impossible to name another day in the same term, as there would not be time for the jury process. But I will leave it entirely to the court, I press no day. It is the prisoner's wish to be tried, if he can be ready; if the witnesses arrive, it is the wish of his heart to be tried.

* By the 45 Geo. III. c. 92, s. 3.—Service of subpoena on a witness in one part of the United Kingdom, to give evidence in a criminal prosecution, is as effectual as if the witness had been served with the subpoena in that part of the United Kingdom where he is required to appear, 1 Starkie Law of Evidence, 83; but his reasonable expenses must be tendered to him.

Mr. JACKSON.—My Lords, the impression I would wish to leave on this court is, that notwithstanding four months might appear sufficient for preparation, yet with the utmost exertion, I have not been prepared. Ten days after my trial was postponed, I put matters in arrangement; every exertion was used to bring over the witnesses and documents; notices were served upon certain persons in England to produce certain documents, or correspondences relative to my conduct:—These have not been brought over, and the agent in England has been so grossly imposed upon, from the idea that the trial was put off, that he wrote to my wife that he would not come over, until he heard from me. Why this paragraph was put into the papers in England, and copied into the papers in this town, I cannot say. I never felt a greater disappointment in my life than in not being tried this day.

Mr. ATTORNEY-GENERAL.—On the part of the crown it is my duty to yield to every thing, consistent with the administration of justice, not only that the subject may have justice administered to him, but that all mankind may see it is administered fairly. An affidavit has been read, stating some circumstances material to the point. Others have been read, which cannot have any influence whatever. I say this, that they may not weigh with the public mind. It is idle to say that paragraphs in the papers of England or Ireland can have any weight; they might be put in by persons, knowing nothing of the matter, which might be the present case; it is impossible any agent could be so ignorant as to be deceived by it. Another circumstance is the absence of Mr. Ponsonby. The bar of Ireland furnishes able men fully adequate to conduct a trial of this kind:—There are men as able as Mr. Ponsonby, and when I say that, I mean to pay no small compliment to him. The prisoner swears that some documents are necessary to be had, and that witnesses are to be brought over:—Under such circumstances, I should not think myself justifiable in resisting the application; therefore I submit to the court with deference, that the rule should be to postpone the trial; and that there may be no ground for an application of this kind in future, I submit, that it would be best to postpone the trial to the next term, that the witnesses, both for the crown and the prisoner may attend, and have full notice of the time when they are to attend. As to postponing the trial to a day in this term, and then to have it postponed again, if the witnesses do not attend, it may be done, but it is not regular to make an order upon a contingency of that kind. The first Monday in the next term will be a proper day. I do not find, that the prisoner complains, but the world should know, that he is treated with all the indulgence, a man in his unfortunate situation can be. He was indicted as soon as possible, and he was brought up for trial at a time that the witnesses for the crown were ready; he then applied to postpone his trial.

Mr. JACKSON.—My Lords, may I be admitted to say a word or two? Entirely contrary to what has been complained of by several in my situation in England, I will thus observe, and testify in the face of this court, and the world at large, that for a man in my situation, it is impossible to be treated with more tenderness, humanity, and attention, than I have experienced. Whether the complaints in

England be well founded, or not, the treatment I have met with is not surprising, because it only proves, what every one knows, that humanity is the characteristic of Ireland.

Lord CLONMEL, Chief Justice.—In this case it is unnecessary to know what passes in England, a country as famed for justice, and other great qualifications, as any other country: Justice is there administered in such a manner as to exalt it above the other countries of the earth. It is our duty to administer justice in such a way as to give satisfaction to all parties. I am glad to see, that the prisoner thinks he is well treated. The court has been entirely passive upon the subject, forming the rule upon the consent on both sides. At present there appears to be nothing materially different between the gentlemen concerned on both sides. It will be better to appoint a certain day; it may lessen the expense to the prisoner, to give ample and full time to be fairly prepared for the trial of his life, that he may not want any evidence that the blessings of this constitution can furnish him with—that he may come furnished with every possible defence that time and abilities can supply on the one hand; on the other, judges are to see, that the punishment of flagitious crimes be not trifled with, but that the law may be administered with calmness and vigour. These are my sentiments, and from the opinion I have of my brethren, are their sentiments. To apply them to the present occasion there is no question to debate upon this application. The most probable way to have an effectual trial will be to appoint the first Monday in the next term. Be it so.

Mr. JACKSON.—My Lords, I have been six months confined in a single room. If I might be permitted occasionally, and that very seldom indeed, with the keeper of the prison, to walk in the yard early in the morning, I would be glad of it.

Lord CLONMEL, Chief-Justice.—The court cannot meddle with that. If you complain of oppression, we will interfere.

The prisoner was then remanded.

MONDAY, January 26th, 1795.

The prisoner was this day put to the bar, and the Clerk of the Crown asked him, was he ready for his trial. He said he was.

Mr. ATTORNEY-GENERAL.—My Lords, I am on the part of the Crown to move the court to postpone the trial in this case to some day within the term, in such time as may give an opportunity to issue a *venire* with the usual return of fifteen days, which can be upon the 10th of February next. The ground of my application is this, that one of the witnesses is absent and cannot attend this day.* I have an affidavit in my hand, sworn by Mr. Kemmis, the Crown Solicitor, stating, that he used the utmost diligence to bring over the witnesses from England, all of whom, except two, reside in London, and they all attended last term, when at the prisoner's desire the trial was postponed. Mr. Kemmis states by his affidavit, that John Cockayne, a witness, without whose testimony the justice of the case cannot be attained, did write a letter from London, stating that he was in an ill

* *Rex v. Jones*, 8 East. 31. *Rex v. D'Eon*, 3 Burr. 1513. 1 Bl. 510.

state of health, but would set out on the next day, attended by Mr. Mounsey, another witness: Mr. Kemmis also states that he received another letter from C. Mounsey, dated Holyhead, January 24th inst., mentioning that he and Mr. Cockayne had arrived there, but that the severity of the weather, and the quantity of snow upon the roads prevented them from using more expedition; that Mr. Cockayne was in an ill state of health, that he consulted a surgeon, who advised him not to set out for Dublin. Mr. Kemmis swears that he received these letters by post, that he believes them to be genuine, and the contents of them to be true. Under these circumstances, it cannot be disputed that the trial must be postponed, it will be for the gentlemen concerned for the prisoner to say, whether they would have any thing added to the rule.

Here the affidavit was read, and it appeared to contain the facts stated by Mr. Attorney-General.

MR. CURRAN, for the prisoner.—It is submitted to the court, that this affidavit does not lay any ground to warrant your lordships in postponing this trial. There is one fact stated, which Mr. Kemmis does not recollect precisely: he was mistaken in saying, that the trial was put off upon the arraignment, at the instance of the prisoner. The arraignment was too late in Trinity Term to bring on the trial. In the last term, the trial was postponed at the instance and upon the motion of the prisoner, and in consequence of that, it comes on now, unless it be the pleasure of the court to postpone it further. This man has been lying in gaol since the middle of April last, and it is not a matter of course for the crown to postpone a trial, where the party has remained so long in prison, and is ready for his trial. If it were, there would be a way of exterminating almost any man in the community, with more certainty than could follow any trial, because trial and conviction can extend only to guilt, but that kind of silent extermination may fall upon the innocent. To postpone the trial at the present time, there ought to be proper verified matters of fact laid before the court. If that rule be a true one, it is impossible to postpone the trial upon this affidavit, because it does not state any verified matter of fact: there is no circumstance stated but upon the belief of Mr. Kemmis. There is no affidavit by the meanest process-server, that he made any request personally, or that Cockayne made any promise to attend. A letter has been spoken of: is there any affidavit of any man, that says he knows the handwriting of Cockayne, and knows this letter to be his handwriting? Mr. Kemmis says he received this letter. Does he know the handwriting? No: he believes it is Cockayne's letter. Does he say why he believes it? Does he state that the letter promises he would attend at any other time? Not a word. It states that he is sick. But there ought to be established facts laid before the court. Let the gentlemen concerned for the crown make the motion as a matter of course, because they do not wish to go on with the trial, finding it is either impracticable, or nugatory; or let them lay some satisfactory matter for the purpose. I submit that there is nothing to intitle them to the order now sought for.

MR. PONSONBY on the same side.—My Lords, I humbly submit, that this affidavit does not state sufficient matter to intitle the crown

to put off the trial. The affidavit should state specifically that the person, on account of whose absence the trial cannot go on, was a material witness. The affidavit does not state that positively; Mr. Kemmis only says, *he believes*, and he used these extraordinary words, "that the justice of the case cannot be attained without this witness."—What does Mr. Kemmis call the justice of the case?—Hanging my client without the verdict of a jury, or the sentence of your Lordships. The affidavit does not state positively, that the witness was material for the prosecution; neither does it state that his attendance is expected, or that there is reasonable ground to believe he will attend at any future day. There is no instance, even in a civil case, where a trial is put off, unless the party swears positively that the witness is material, and that there was reasonable ground to expect his attendance. The letter mentioned in the affidavit does not state, that the witness will come; the certificate of the surgeon does not state, that the indisposition will permit the witness to attend at a future day, nor does the Crown Solicitor say he has reason to think the witness will attend. Therefore the ingredients, which are thought material in civil cases, are wanting in this case. How much more material are they in a case of treason, and where the party has lain nine months in gaol?—This is a mere imposition upon the simplicity of the Crown Solicitor.

Mr. PRIME SERJEANT in reply for the crown.—As it strikes me, this affidavit is more full and pregnant with circumstances to lead the discretion of the court than any I remember. The first position is, that John Cockayne is a material witness, as he believes for the crown. How is it possible for any man to swear to more than belief in such a case? it is impossible to conjecture. But if there be any doubt upon the materiality of his evidence, your lordships have before you, that which will satisfy you whether it be material or not. Upon looking into the informations, you can form a conclusion whether this man's testimony be material or not, at least to put the prisoner upon trial;—the jury will determine whether it be sufficient for conviction. The next position is, that the justice of the case cannot be attained without the examination of Cockayne, as deponent believes. Look then to the same document, and see whether the examination of Cockayne be not essentially necessary to the justice of the case. The next fact stated is, that this trial was postponed in Trinity term; it is not pretended that it was postponed at the desire of the crown, nor will I say it was at the desire of the prisoner. It was with the concurrence of the prisoner's counsel; all the witnesses for the crown attended at that time. So it rested until November; then an application was made on the part of the prisoner to postpone the trial. The counsel for the crown did not resist the application, that the prisoner might have an opportunity of vindicating his character upon a fair trial. The trial being appointed for this day, the Crown Solicitor states, that on the 17th of January inst. he received a letter, which he believes to be genuine, from Mr. Cockayne, stating that he would set out the next day from London for Ireland to give evidence upon this trial. Then the Solicitor states that he received a letter on Saturday, the 24th inst. from Mr. Mounsey, who accompanied

Cockayne to Holyhead, where the Solicitor swears he believes Cockayne now is. The letter mentions, that Cockayne had come so far in prosecution of his intention : the letter contains the certificate of the surgeon enclosed, as to his state of health. It is said, there is no affidavit of any process being served. Where a party has given informations, and is bound to prosecute, it is not thought necessary to serve any process to compel his appearance, because he has entered into a recognizance to appear. If there had been no recognizance and the witness lived in Ireland, process might be necessary ; but I do not know the effect of any process served upon a witness in England to attend in Ireland : I give no opinion how far such a process would be obligatory ; but where a party is bound by matter of record, it would be absurd to call upon him by process. The Solicitor for the crown says he has used his best endeavours and diligence to have the prisoner tried with all possible expedition. This application is made only in consequence of the absence of Cockayne ; if the trial be postponed, the Solicitor states he is in hopes Cockayne will attend :—What hopes can be more reasonable where the party has come so far as Holyhead ? If the Solicitor for the crown had stated his belief without any reason for it, could it be so strong as where he has assigned his reasons ?—He swears the witnesses are at Holyhead, as he believes, and that the letters are genuine. If these matters be not sufficient to postpone the trial, I am much mistaken ; I have mistaken the discretion of judges.

LORD CLONMEL, Chief Justice.—It is impossible to go on with the trial this day. The rule is made with the concurrence of my brethren. This is an application to postpone the trial to the 10th of next month—a day in this term—and see upon what ground it is made. It has been very truly said (and I shall ever hold it as my opinion, and have done so for twenty years ; the first time I took it up was upon consideration with Chief Justice Paterson, when the question was considered by a variety of persons in the case of the White-boys) that it never was of course, and it ought not to be of course to postpone a trial on the part of a prosecutor, and one reason was this, if the prosecutor's witnesses die, what they have said is not lost, having given examinations before ; if the prisoner's witnesses die, he is undone ; and therefore it is not to be considered as a matter of course ; but the rule in those cases must be governed by circumstances. See what the circumstances here are :—The trial was first put off, not as against the prisoner, but to accommodate him :—at that time, Cockayne, who has sworn material informations, attended ; the Solicitor for the crown swears more, that he believes Cockayne to be a material witness ; he attended as such ; he resides in another country ; he came over, and entered into a recognizance, in consequence of the informations he had given. In Michaelmas Term, the trial was postponed upon application of the prisoner ;—upon what ground ?—that he wanted a material witness—that circumstances prevented his having his evidence—that he was not prepared.—Now, there is an affidavit made, stating circumstances—what circumstances ? That Cockayne, and Mounsey, two witnesses, to prove their sincerity of intention in coming to attend the trial, set out from London, and are at Holyhead ; and though the certificate

of the surgeon might be stronger, if made upon oath, yet from the letter sworn by the crown Solicitor to be genuine, the attendance of the witnesses is expected, if the trial be postponed to the latter end of the term; therefore to hurry on a trial, so serious to the prisoner, and the public, could have the appearance of levity. If the prisoner be not guilty, he will have an opportunity of clearing himself fully; if he be guilty, we should not defeat justice; where the crown was ready twice to prosecute, we ought now to postpone it. Let the trial be postponed to the 10th of February.

Mr. PONSONBY, for the prisoner.—If the trial be postponed, the prisoner wishes it may be postponed to the next term. A material witness, who attends for him, is an attorney of the courts at Westminster, and he cannot stay here during the whole term.

Lord CLONMEL, Chief Justice.—I think we must yield to the prisoner's application. There is no assurance given to us, positively, that on the 10th of next month there will be a trial, or that the crown can be ready, nor can the circumstances justify such assertion, the absence of the witness being occasioned by sickness. Then it comes to this, the crown is not ready, and it is not stated positively when the prosecutor will be ready. A witness for the prisoner says that it is indispensably necessary for him to attend at Westminster, and that an absence from the court there during an entire term, will be at the hazard of ruin to himself and his clients.—What is to be done? It comes to a question of convenience, which is a serious one to individuals, but we cannot balance the expence. We must postpone the trial until next term.

The trial was accordingly postponed to the second day of Easter Term, and the prisoner was remanded to Newgate.

KING'S BENCH,

THURSDAY, April 23d, 1795

COURT.

Right Hon. the Earl of CLONMEL, Chief-Justice,

*Hon. Mr. Justice DOWNES,

Hon. Mr. Justice CHAMBERLAINE.

COUNSEL FOR THE CROWN.

Mr. ATTORNEY-GENERAL,

Mr. PRIME-SERJEANT,

Mr. SOLICITOR-GENERAL,

Mr. FRANKLAND, and

Mr. TRENCH.

Agent—THOMAS KEMMIS, Esq. Crown Solicitor.

COUNSEL ASSIGNED TO THE PRISONER.

Mr. CURRAN, and Mr. PONSONBY.

ASSISTANT COUNSEL.

Mr. R. GUINNESS,

Mr. M'NALLY,

Mr. EMMETT,

Mr. BURTON, and

Mr. SAMPSON.

Agent—EDWARD CROOKSHANK KEANE, Esq.

The prisoner being put to the bar,

Clerk of the Crown.—William Jackson, are you ready for your trial?

Mr. JACKSON.—Yes.

The Sheriff of the city of Dublin was then ordered to return his pannel, which he did, and it being called over, fifty-one attended.

Clerk of the Crown.—William Jackson, those good men whom you have last heard called, and whom you now see in the box, are to be sworn upon the trial of your life. If you have any cause of challenge to them or either of them, you must challenge them as they come to the book, and before they are sworn, otherwise you will be too late: you may challenge twenty peremptorily, and as many more as you can show cause for. Prisoner and prosecutor look to your challenges.

Sir Francis Hutchinson, Bart.—Challenged peremptorily by the prisoner.

John Claudius Beresford, Esq.—Challenged peremptorily by the prisoner.

John Exshaw, Alderman.—Sworn.

Frederick Trench, Esq.—Challenged peremptorily by the prisoner.

John Pentland, merchant.—Sworn.

Richard Cranfield, merchant.—Sworn.

William Humfrey, merchant.—Sworn.

* Hon. Mr. Justice Boyd, was prevented from attending by indisposition.

Robert Ashworth, Esq.—Challenged peremptorily by the prisoner.

Thomas Kinsley, merchant.—Challenged peremptorily by the prisoner.

George Cowen, merchant.—Objected to by the prisoner, as having expressed an opinion upon the subject of the trial.

Lord CLONMEL.—Establish your challenge.

Mr. CURRAN.—There is no intention of taking any captious objection; but if this gentleman has declared any sentiment upon the subject of the trial——

Mr. COWEN.—I have not expressed any opinion upon the subject of the trial, nor do I know any thing of it.

He was then sworn without any further objection.

Samuel Middleton, merchant.—Challenged peremptorily by the prisoner.

Stuckey Simon, Esq.—Sworn.

Robert Walker, merchant.—Challenged peremptorily by the prisoner.

John Oldham, merchant.—Objected to by the Crown, but the objection being withdrawn, he was sworn.

James Donovan, merchant.—Sworn.

Alexander Clarke, merchant.—Put by on the part of the Crown.

David Weir, merchant.—Challenged peremptorily by the prisoner.

John Ward, the elder, merchant.—Sworn.

Mark Bloxham, merchant.—Challenged peremptorily by the prisoner.

John Murray, merchant.—Ditto.

John Minchin, merchant.—Ditto.

William Castles Hollister, merchant.—Put by on the part of the Crown.

John Campbell, merchant.—Challenged peremptorily by the prisoner.

Alan Foster, merchant.—Sworn.

John Crosthwaite, merchant.—Challenged peremptorily by the prisoner.

John Smith, merchant.—Sworn.

William Edmondston, merchant.—Put by on the part of the Crown.

Benjamin Simpson, merchant.—Challenged peremptorily by the prisoner.

James Davis, merchant.—Ditto.

Charles Henry Sirr, Esq.—Ditto.

Thomas White, merchant.—Put by on the part of the Crown.

Hugh Cochran, merchant.—Challenged peremptorily by the prisoner.

Lewis Hodgson, merchant.—Sworn.

THE JURY.

John Exshaw,	John Oldham,
John Pentland,	James Donovan,
Richard Cranfield,	John Ward, the elder,
William Humfrey,	Alan Foster,
George Cowen,	John Smith,
Stuckey Simon,	Lewis Hodgson,

The prisoner was then given in charge to the jury by the Clerk of the Crown, who read the whole indictment.

Mr. TRENCH opened the pleadings.

Mr. ATTORNEY-GENERAL.—My Lords, and gentlemen of the jury. In this case the Rev. William Jackson, the prisoner at the bar, a clergyman of the church of Ireland, and a native of this kingdom, stands charged with high treason. He is charged with two species of that crime; one, the compassing and imagining of the death of the King; the other, that of adhering to the King's enemies, namely, to the persons executing the powers of government in France, with whom the King was at war. The court will inform you, gentlemen of the jury, that this indictment is grounded on the stat. of 25 Ed. 3. by which to imagine, compass, and design the death of the King is declared to be high treason. In this single instance, a crime intended, though not committed, is made by our law punishable with death; on account of the interest which the subjects have in the life of their chief magistrate the King, to compass his death is guarded in this peculiar way. The peace and happiness of society depend on the preservation of his life. But at the same time that the law has thus wisely guarded the person of the King from violence, it has taken care that those who shall be charged with this crime, shall not be easily or lightly found guilty of it. The law has therefore made it necessary that the criminal intention shall be manifested by an overt act, an act openly done and plainly proved, by which the intention of the party to commit that horrid crime shall be made clear and manifest. On this species of treason I am also to observe to you, that to constitute it, it is not necessary to shew that the party accused had an intention actually to put the King to death, or that that was the immediate object. The compassing of the King's death does not import that the person charged intended to put the King to death; but if he intended to commit any act leading directly or in its consequences to the death of the King, it is settled law that such is to be considered as a compassing of his death. As for instance, to conspire to dethrone the King;—for as history and experience shew, to dethrone the King leads to his death. So, a conspiring or design to imprison the King. The distance between the prison of a King and his grave is small indeed. Therefore to support the charge of the first species of treason, viz. compassing the death of the King, fourteen overt acts are stated in the indictment. If any one of those be proved, and it be such as to show an intention of compassing the King's death, you will find the prisoner guilty of that charge. I will not take up your time and that of the Court in enumerating particularly all the several overt acts. I will however mention those that appear to me most important. It is charged that the prisoner consulted with several other persons to induce the governing powers in France to invade this kingdom for the purpose of dethroning the King; the consultation of the prisoner with others on the means of effecting such a purpose is an act whence you may collect the preconceived intention of compassing the death of the King; another act charged is, that the prisoner procured a statement of the situation of Ireland to be drawn up and put into the post office to be sent to France to the ruling powers there, to induce them to invade this kingdom, and thereby dethrone the King. Another act charged is, that the prisoner with divers others endeavoured to persuade a person named to go to France,

and give intelligence to the ruling powers there, to induce them to invade Ireland, in order to dethrone the King and overturn his government. Another overt act laid in the indictment, is his endeavouring to persuade another person to go with the same view to France. It is likewise laid as an overt act, that he came into this kingdom for the purpose of exciting a rebellion to dethrone the King. Other overt acts are laid in sending several letters to different persons to induce France to invade this kingdom. Now if, as I said before, any one of those facts be proved, the intention of procuring an invasion will be established, whence it follows by a necessary induction of law that the prisoner is guilty of the crime of compassing the King's death.

The other species of treason charged against the prisoner at the bar is that of adhering to the King's enemies. The nature of this species is fully and clearly expressed in the very terms of "adhering to the King's enemies." But overt acts must be laid of that also, and in the indictment the same fourteen overt acts are laid as applicable to support this charge as are laid to support the former. It needs no argument to satisfy you, gentlemen of the jury, that if a man endeavours to persuade the King's enemies to invade his dominions, and sends intelligence to them for the purpose of furthering such an attempt, that such a man adheres to the enemies of the King.—Such are the crimes charged against the prisoner at the bar. Whether he be guilty of both or either of them, it will be for you to determine. You are now about to discharge a sacred and an awful duty. You have on the one hand to discharge your duty to your King and to your country. You are to take care that if the party be really guilty, he be found guilty, to the end that men may be deterred from committing crimes of the last magnitude—crimes tending to destroy the peace and security of society—to wrest from us all that can make life valuable.—On the other hand you have a duty not less sacred, that of protecting the innocent. However horrid the crime be in its nature, you should not permit yourselves to be hurried away by your feelings or your passions lightly to find the accused guilty. The more dreadful the crime, the more circumspect and deliberate ought the jury to be. These observations, I am sure, are not necessary to be made to the jury to which I have the honour of addressing myself. I make them rather as a discharge of my public duty, than as feeling them necessary for your instruction.

Having thus stated, as simply and clearly as I am capable, the nature of the crime, it now becomes my province to lay before you the facts which I am instructed will appear in evidence before you. In doing this it will be my duty to state these facts with the utmost plainness, without giving them any colour whatsoever to induce you to lean against the prisoner. I state the facts merely that you may more clearly and readily comprehend the evidence as it will be offered to you. The case itself is plain and simple. It is not a species of treason which is to be collected from doubtful facts or doubtful evidence, or to be collected by inference from a multiplicity of complicated circumstances, but rests on very simple evidence indeed.

The prisoner at the bar is a native of this country. He had early in life gone to reside in London, where he continued for a number of

years, but sometime since, the exact period I am not informed of, he went to reside in France. He was there for a considerable time after the Revolution took place. In order that you may understand the meaning of some papers that will be laid in evidence before you, it will be necessary to state the connections and circumstances of several persons, whose names will frequently occur in the course of the trial. In the years 1793 and 1794 there was resident in Paris a gentleman of the name of John Holdford Stone, by birth an Englishman, and engaged in trade in the city of Paris. There was connected with him, whether as assistant or partner I do not exactly know, another gentleman named Benjamin Beresford, who is married to the sister of Archibald Hamilton Rowan, Esq., formerly of this country. J. H. Stone has a brother named William, who in 1793, and in the beginning of 1794 was resident in London, and sometimes at a small villa called Oldford, in the neighbourhood of London. He is in the coal trade, and is, or was at the time of which I am speaking, in partnership in a company whose firm is Lawrence and Co., resident in Rutland Place, near Blackfriars Bridge, London. Towards the end of 1793, or beginning of 1794, the prisoner was sent from Paris by the then ruling powers, to London, for the purpose of learning the state of the kingdom of Great Britain, and the disposition of its inhabitants, and how far it would be practicable to invade that country with success; and further, if he should not find a probability of success in the designs entertained of invading that country, he should pass into Ireland on the like mission. He accordingly set out from Paris, accredited by John H. Stone to his brother William Stone in London, who had been by letter previously informed of the intention of sending this gentleman into Great Britain. He was also supplied with some letters; we cannot take upon us to say how many, or if more than two, but of two we are possessed—one directed to Mr. Horne Tooke, the other to a Doctor Crawford, of this kingdom. Mr. Jackson arrived in London in January or February, 1794, having passed through Hamburgh, and landed at Hull. It appears, that immediately on his arrival he waited on Mr. William Stone, by whom he was kindly received, and with whom he had a confidential intercourse. While he remained in London he endeavoured to procure as accurate a State of England as he could, I mean with respect to the disposition of the people to aid the French if they should make an invasion, and to receive from them the embrace of fraternity. Mr. Jackson found means to procure a state of that country in the respect I mentioned, to be drawn for his information, as appears by a person of some consideration, and the information which he received, I believe and trust, was well founded. He learned that the people of England were not willing to receive the French, and that if they should come, they would find ninety-nine in one hundred zealous to rise in arms against them. During his stay in London Mr. Jackson carried on his correspondence with France through Mr. W. Stone. On his arrival in London he renewed an acquaintance which he formerly had with Mr. John Cockayne, an attorney of eminence residing in Lyon's Inn;—he procured this gentleman to direct several letters for him to foreign countries, saying, that having contracted debts during his former residence in England, he did not wish his

hand-writing should be seen, least it might be discovered that he was in England. Mr. Cockayne, without knowing the nature of those letters, did direct them. There is every reason to apprehend that those letters contained a communication of his transactions in discharge of that treasonable duty on which he had been sent. Not finding that he was likely to succeed in Great Britain, he was desirous to make an experiment in this his native country. During the time of his stay in London he passed by the name of Jackson, his own proper name, assuming however the character of an American merchant. He communicated to Mr. William Stone his intention of coming to Ireland, and desired to have a correspondence with him, and that he Mr. Stone should transmit his foreign letters. With this view he furnished Stone with a paper which will be proved to be in his own hand-writing, explaining the manner in which he would have such foreign letters transmitted to his foreign correspondents. This paper will deserve your particular attention, because it will serve clearly to connect many of the circumstances that will be proved, and to confirm and support the other evidence that will be offered. [Here Mr. Attorney-General read the paper of directions.] At the time that this paper was delivered, the prisoner informed William Stone that he should write to him not by his own name, but by that of Thomas Popkins. While this proceeding was going forward, the treasonable object and view of the prisoner was darkly intimated to Mr. Cockayne. He felt, as I believe every gentleman, every man of common sense must have felt in the like circumstances. It immediately occurred to him that the letters which he had directed were treasonable, that they had passed through the Post-office, and were exposed to detection. He stood astonished and appalled at his situation. There was apparent evidence of treason against himself. Added to his feelings for his own personal safety, he felt the danger the state was exposed to. He determined to prevent the danger impending on himself and his country, and he disclosed to government the whole of what he knew or suspected. Government, thus aware of the dangerous practices that were on foot, did, as was their duty, determine to counteract the schemes of Mr. Jackson, and to bring to justice if possible, the perpetrators of such horrid crimes. Mr. Cockayne at the desire of Mr. Pitt consented to accompany Jackson in order to render abortive his wicked purposes. Towards the end of March, Mr. Jackson set out for Dublin, accompanied by Mr. Cockayne. They arrived the 1st April 1794: on their arrival they lodged at a house called Hyde's Coffee-house, at the corner of Palace-row, and it appears that Mr. Jackson in a day or two after his arrival made an acquaintance or renewed an old one with a gentleman of the name of Leonard M'Nally. Mr. M'Nally merely no doubt from that hospitality in which Irishmen are never deficient, invites the two strangers to dine with him, and as a man of manners always does, he selected an agreeable company to meet them. Mr. Simon Butler and a Mr. Lewins were among others present at this entertainment; the conversation was naturally turned, by the gentleman who had come on this kind mission, to the state of the country. Much talk there was about the discontented state of this kingdom, anxiously did he inquire how far the people would be willing to rise, if there should be an invasion by the French. I only

mean to say that such was the turn of the conversation introduced by Mr. Jackson. I mean not to charge any man who has not an opportunity of defending himself. Opinions on the subject were delivered by the host and his guests. Mr. Butler held that though there were some discontents in various parts of the country, yet that the generality of the people having property and education were loyal and had a considerable influence over their tenantry, and that the invaders would be foiled in the attempt. Other gentlemen entertained different opinions. During this conversation something was said of Mr. A. H. Rowan, then in prison in Newgate for publishing a seditious libel. Mr. Jackson imagining that Mr. Rowan could give him full information on the subject he had so much at heart, expressed a desire to be introduced to his acquaintance. Some difficulty there was both with the friends of Mr. Rowan and others, as to the authority of Mr. Jackson to treat at all, on the part of the French government. Mr. Lewins however undertook to introduce the prisoner to Mr. Rowan; and in order to accredit this ambassador from France, Jackson delivered the letters which he brought from Paris to Mr. Tooke and Dr. Crawford, for he had not thought proper to deliver Tooke's letter; why that was not done I am not informed. These letters were not sealed, and the prisoner knew the contents of them. That he did know their contents is demonstrable; if he had not read them he would not have sent them to Mr. Rowan to establish his credit with that gentleman. A meeting on the credit of these letters is had between Mr. Rowan and the prisoner. What passed at their first interview I am not able to inform you; but at it he received the letters from Mr. Rowan which he had sent by Lewins, and about which he had expressed great uneasiness during the time they remained out of his custody. Another meeting appears to have been appointed between them. Mr. Jackson was invited to breakfast at Mr. Rowan's apartment in Newgate to meet a third person—Mr. Cockayne accompanied Mr. Jackson—this was about the 25th of April. Jackson was to meet a third person there to concert the means of sending an able and trusty negotiator to the French government, by whom, as he expressed it in one of his letters, more could be done in a short time than by a thousand letters. The meeting took place, the persons present were Jackson, Rowan, Cockayne, and Mr. Theobald Wolfe Tone. The object of the meeting was to prevail on Tone to go to France with the view of communicating to the Ruling Powers, the willingness of this country to rise and upset the government, and to point out the best means of effecting a descent on this kingdom. It was thought that nothing could more effectually tend to attain the object that these conspirators had in view, than to send a man of sense and ability accredited by a person, in their estimation of such high consequence as Mr. Rowan, to Paris, there to converse with the French Ministry, and persuade them of the practicability of their scheme. At this meeting a paper was produced and read, and which will be laid before you, drawn up at the desire of Jackson, and importing to be a statement of the disposition of the people of Ireland; then it was proposed to send Mr. Tone to France—Jackson endeavoured to persuade him to go—Tone made several objections; he had a wife and three children—a debt was due to him, part of a

reward for something which he had done for the Catholics—this debt would be lost if he should go to France. Rowan encouraged him to go, assuring him his wife and children should be attended to and protected. Tone hesitated—he expressed apprehensions of the reception he should meet at Paris, and of the reward he might receive—he even had fears that he might never return to Ireland—Jackson encourages him, anxiously endeavours to remove his fears and excite his hopes; something he hinted that the Catholic debt would be made good; he assured the hesitating Tone that the French were a noble and generous people, that he might depend on being treated with the utmost liberality, at the same time admitting that he had not authority to offer a specific sum.* Mr. Tone at this time was under the necessity of going to the assizes of Drogheda, and after his return he at a second meeting of the same persons altogether declined to undertake the journey to Paris. Another able negotiator must be provided. A Dr. Reynolds presented himself to the mind of Rowan as a fit person, and a meeting is had at which the Doctor is present. The Doctor is applied to. He is at first willing to go, but on a little reflection he thinks the expedition rather hazardous. He recollects that he understands not one word of the French language nor of the manners of those countries through which he was to pass. However the eloquence of Mr. Rowan was exerted, Reynolds yields to his persuasion, the route was settled, but again the Doctor reflects, hesitates and at length determines not to hazard the undertaking. While these consultations were going forward, Jackson was employed in making communications to his correspondents and principals in France, of what he was doing here and how far he was likely to attain the object of his wishes. I have stated that he arrived the 1st April. Previous to that, government here being informed by the British Minister of his object, the Irish government did, as they ought, take every possible precaution to come to a knowledge of all the proceedings of this emissary, and with this view, being apprised through Mr. Cockayne of the addresses of Jackson's foreign correspondents abroad, gave orders to the post-office, as by law they are warranted, and by their duty bound to do, to open letters of so dangerous a tendency. Mr. Jackson soon after his arrival in Dublin, on the 5th April wrote

* No prosecutor could be more humane than Arthur Wolfe, nor less anxious to state anything too strongly against accused parties, and therefore the statement in this place with regard to Tone must be considered an unintentional error. It certainly is not quite correct. Tone thus mentions the circumstance—"I then took an opportunity (on the difficulty of a proper person being found to go to France being stated, and it being mentioned that no one was in all respects so fit as myself) to recapitulate pretty nearly what I said in all the preceding conversations on the general state of the country; and I then added, that with regard to my going to France, I was a man of no fortune; that my sole dependence was on my profession; that I had a wife and three children, whom I dearly loved, solely depending on me for support; that I could not go and leave them totally unprovided for, and trusting to the mercy of Providence for existence; and that consequently with regard to me, the going to France was a thing totally impossible. They all agreed that what I said was reasonable, but there was no offer of money or pecuniary assistance of any kind held out to induce me to change my determination; a circumstance I mention merely because I understand it is believed that some such was made."—Tone's Life, 1 vol., p. 119. American Edition.

to Mr. W. Stone of Oldford, announcing to him his arrival in Ireland, apologizing for not writing sooner, telling him he found many kind friends, and desiring him not to make any use of the addresses he had left him, the price and nature of the articles being (as the letter expresses it) entirely changed. You will perceive that terms are made use of strangely and enigmatically, expressions of trade are employed where no trade was, but in truth significant of the political objects on which Jackson was employed. Here you will see by the context what the meaning of the writer was. About this time a new revolution had taken place in Paris. Danton had been assassinated by the opposite party, and this is the change in the articles to which the letter alludes; and this letter is signed Thomas Popkins. To this letter Stone wrote an answer dated 11th April in which he acknowledges the receipt of it. Jackson wrote a letter dated 24th April to Mr. Beresford at Paris, and procured Cockayne to copy it. This also is signed Thomas Popkins. In it he says, "you are requested to see Madget directly, and inform him that this evening the opinions of two eminent counsel are sent to him;" throughout making use of legal terms, as if he was conducting some law suit. Madget, in this letter, means the marine minister of France. The estate mentioned in the letter is the kingdom of Ireland. There is a *Nota Bene* at the end of the letter which is nothing to the purpose only as it serves to add further authenticity to the letter. Another letter will be laid before you which sets out with the date of 21st April but which was not closed till 24th April. It is to William Stone and in the prisoner's hand-writing, but the superscription is of Cockayne's writing. He says "I am glad the patterns (meaning letters formerly sent to this Stone) have reached the persons." The outrider mentioned in this letter means the post-office. In the former letter the opinion to be sent was that of counsel, in a matter of law, in this the opinion is that of a manufacturer in a matter of trade, and yet both letters speak of the same opinion, and the opinion means the state of Ireland which I have before mentioned. Mr. Nicholas in this letter is used to denote the war minister of France, and in some of the letters perhaps signifies France itself. It is plain that the matter which the statement mentioned in this letter was to contain was of the same nature with the paper drawn up in England, for it refers to it and this was neither a law case nor an opinion on trade, but a political discussion. You will perceive how little able this man was, as I believe any man would be, to carry on a subterfuge of this kind with success. He confounds the terms he uses, he mixes and confuses characters and things, and he shews manifestly that he was anything but what he pretended to be. In this he says that he should set out for Cork in a few days. Upon the same day Jackson put into the post-office two copies of that State of Ireland called in his letter a state of the case, and which has been four times read to you from the record. I am not at present precisely informed, nor is it indeed material in whose writing those copies are. One of these copies he directed to go by Hamburgh, the other by Amsterdam. One of them is in a cover marked with a large cross on the outside exactly corresponding with the instructions given to William Stone, put, as I am instructed, on the paper by the prisoner himself. This is enclosed in

another cover directed to Monsieur Daubescaille, at Amsterdam, and then another cover encloses all, directed to Messrs. Texier, Angely and Massac, at Amsterdam. All the superscriptions are by Cockayne, and on the inside of the first cover are written these words, "remember me to Laignelot and family," also in Cockayne's handwriting but dictated to him, as the superscriptions were, by the prisoner. I shall not take up your time in reading this paper. It is sufficient for me to state that it is a manifest disclosure to the enemy of the supposed state of this country, inviting them to land on its coasts and pointing out what was fit and necessary to be done by them to effect that design. This evidence applies to both charges, that of compassing the King's death and that of adhering to his enemies, and is an overt act of each treason. The other copy of this paper is enclosed in a cover marked without with a large cross, and that is enclosed in a cover to Monsieur Chapeaurouge, at Hamburgh, and in the first cover are written "remember me to Laignelot and all friends." The cover is directed and these words written by Cockayne, by Jackson's direction and in his presence. These superscriptions you will observe, and it demands attention, accord precisely with the addresses left with William Stone by Jackson when he left London. The papers were put into the post-office, and there they were by order of government intercepted. I have omitted to mention that William Stone signed his letters to Jackson, W. Enots, which is Stone reversed, a circumstance of much weight. Do innocent merchants engaged in an ordinary mercantile transaction use assumed names? Why, if no treason in the correspondence, does Jackson write himself Popkins and Stone reverse his name? Mr. Jackson on 28th of April was arrested by a warrant from my Lord Chief-Justice on a charge of high treason. He intended on that day to have set out for Cork, as he had mentioned in one of his letters to Mr. Stone. The objects of his journey to Cork were first to examine the state of the country, and next to procure some person to supply provisions for the ruling powers in France. He was in bed at the moment of his arrest, and by the bed side stood a table on which were several papers. These papers were seized, and they will be laid before you, for we wish you to be possessed of every circumstance that can elucidate the subject; among these was found the letter from Stone to Jackson and also the letter from J. H. Stone in Paris to Tooke, speaking in the strongest terms of the intention of the French to invade this country. There was also found a note from Rowan respecting the disappointment he received from the non-attendance of a third person at one of their meetings, and a note from Tone excusing himself from his attending. I shall not go more minutely into the nature of the evidence at present. It will appear to you gentlemen of the Jury, that the prisoner came from France to procure intelligence to be conveyed to the enemy, and that he did while here use his utmost exertions to invite and excite the enemy to invade this country. When you shall weigh and put together the circumstances that will be proved, and compare the whole scope of the evidence, you cannot be at a loss to determine what the object of this man's mission was, and perhaps the dark nature of some of these papers will carry a demonstration more striking than plainer terms. Thus gentlemen, I

have stated the great outlines of this case, having no other view than to render the evidence as it shall be offered, more intelligible. I have studiously avoided all colouring and everything that can inflame the passions. I have in acting thus, I hope discharged the duty I owe at once to my King, my country and the prisoner at the bar, and I now leave the matter on the whole of the evidence to you, being perfectly convinced, gentlemen, that it is your inclination as it is your duty to investigate the charge with the most minute attention, and that you will bring in a verdict founded solely on the evidence, at once remembering the duty that is due to the society in which we live, and to the prisoner upon whose life you are shortly to pronounce that verdict.

The ATTORNEY-GENERAL sat down, but rose to say that he ought to have mentioned that Stone of Oldford was arrested in London soon after the arrest of Jackson here, and that Jackson's letter of the 5th of April, and the paper of addresses was found among Stone's papers in his house at Oldford.*

John Cockayne, examined by the ATTORNEY-GENERAL.

Q. Do you know the prisoner at the bar? A. Yes.

Q. How long have you known him? A. Ten years and upwards.

Q. Do you know where has his residence been for the last four years? A. I believe in France.

Q. Your belief is not evidence; did you ever hear him say where he had resided? A. I have heard him say that he had resided in France latterly. I have missed him from England two or three years.

Lord CLONMEL.—Can you ascertain from information given by the prisoner, how long he had lived in France? A. I cannot say; I know he went from England upon the Duchess of Kingston's business.

Mr. ATTORNEY-GENERAL.—When did he return last to England? A. I cannot tell the very day he returned to England, but it was some time in January or February, 1794.

Q. Did he tell you after his return where he had been? A. He said he had been in France.

Q. Did he say, whence he had come? A. From France.

Q. How long did he remain in England on that occasion? A. I should think about two months, rather under than over.

Q. In what part of England do you reside? A. I reside in Lyon's Inn.

Q. Your profession? A. An attorney.

Q. In what part of England did the prisoner reside? A. He had lodgings at the Buffaloe Tavern, Bloomsbury-square.

Q. Had you any intercourse with him during that time? A. Constant.

Q. Had you any reason to know upon what business or object he was engaged during the time of his remaining in London, or what brought him from France? A. I cannot particularly mark any period to give a precise answer to that question; if you point out any period of time, I may answer you.

* Stone was tried for high treason and acquitted

Q. Did he employ you to do any business for him? A. I did something for him in his private, his mercantile affairs.

Q. (By the Court.) What do you mean by his private affairs? A. I mean money matters; in the capacity of a friend and an attorney.

MR. ATTORNEY-GENERAL.—When did he leave London? A. The latter-end of March, 1794, I think.

Q. Who accompanied him? A. I did.

Q. How did you travel? A. We came together, I think in the mail-coach.

Q. Whither were you going? A. We were destined for Dublin.

Q. Now Sir, what was your inducement to accompany the prisoner? A. My inducement was to counteract any scheme or plan that he had in agitation, as I thought that he had when I left England, of providing France with necessaries and articles, which were prohibited from being exported thither from this country.

Q. What reason had you to suppose he had such a scheme? A. Conversations which I had with him in England.

Q. (By the Court.) What do you mean by prohibited articles? A. I do not know that I can specify what articles are or are not prohibited, not having looked into the act, but I understand it to mean provisions.

Q. How do you understand that? A. By conversations I had with the prisoner.

MR. ATTORNEY-GENERAL.—Will you mention what those conversations were that you have spoken of? A. I should find great difficulty in answering you as to any one conversation; I cannot answer you with precision as to any one of them.

MR. ATTORNEY-GENERAL.—Mention the general purport of them.

MR. CURRAN.—With great deference, I conceive that evidence of this kind is not admissible—for a witness to state to the Court what he supposes to be the general purport of a number of conversations, not one of which he declares he can state with any kind of precision. I conceive that if a man is to be affected by anything that he says, the Court and the Jury are to know what he says; but this kind of inference is not legal evidence, nor can any man be affected by a general conclusion formed by a witness from conversations which the witness does not pretend to state.

MR. ATTORNEY-GENERAL.—This is new doctrine to me—the witness is going to say what was the general purport of the prisoner's design—(to the witness) you say you came from London accompanying Mr. Jackson, to prevent, if you could, the intention you apprehended he had of sending prohibited articles to France—did you collect that intention from conversations you had with him? A. I did.

MR. CURRAN.—Well, since this evidence is pressed, I must call on the Court to decide.

LORD CLONMEL.—He has not yet gone too far; I think he says that he understood it from conversations with the prisoner, none of which he can particularly state: this is evidence, but it goes to his credit.

ATTORNEY-GENERAL.—When did Mr. Jackson arrive in Dublin?

A. I believe on the 2d or 3d of April.

Q. Where did you lodge? A. In Dame-street, at Hyde's coffee-house.

Q. Were you invited to dinner anywhere shortly after your arrival? A. Yes, to Counsellor M'Nally's.

Q. Do you remember who the company were there? A. A Mr. Simon Butler, and *I think* a Mr. Lewins.

Q. Now are you sure whether Mr. Lewins was there or not? A. I am not certain whether he dined, but I am sure he was there in the course of the day—*I think*.

Q. Did you see Lewins there that day? A. If it was not that day I saw him there, I did not see him there at all; but *I think* I saw him there.

Lord CLONMELL.—Recollect yourself—Did you see a man of the name of Lewins there or not? Come to that point. A. *I think* I did, but I cannot positively swear; but I saw him several times.

Q. Is Lewins a man of any profession? A. I do not know.

ATTORNEY-GENERAL.—Who else was there? A. I do not recollect any others.

Q. What, did you go alone? A. No; Mr. Jackson was there.

Q. Did he make any particular enquiries that day; what was the scope of the conversation? A. The scope of the conversation was general; the common conversation at dinner; it entered on politics at last.

Q. Do you recollect the particular conversation? A. It is very hard for me to answer with the precision with which I ought on oath the particular conversations which took place among a set of men who were, perhaps, drinking. I have not a very retentive memory.

Q. You say it turned on politics—what politics? A. The general politics of the day, and also the politics relative to the Irish nation.

Q. Do you recollect what passed relative to the Irish nation? or any part of that conversation as coming from the prisoner? A. I should have great difficulty in stating the precise words that Mr. Jackson said, or Mr. M'Nally said, or Mr. Lewins said, or Mr. Butler said, for I cannot say what one said and what another; but if it is put to me to the best of my recollection what Mr. Jackson said, I will answer.

Mr. PONSONBY.—I object to that evidence; the distinction that I make is this; the witness cannot say that to the best of his recollection Mr. Jackson said so and so; he must swear that he did substantially say so, and then he may speak to the best of his recollection what the words were.

ATTORNEY-GENERAL.—Can you recollect the substance and purport of what Jackson said at that meeting? A. I don't think that I can answer that question.

Q. Do you say that you can't tell the purport of what Mr. Jackson said at that meeting? A. I cannot say precisely.

Q. Can you recollect the purport and substance of what Jackson said? A. Not of what Mr. Jackson in particular said: I might recollect the general purport of the conversation; but I shall then be in the opinion of the Court how far it affects the prisoner; for I cannot swear what Mr. M'Nally said or what Mr. Lewins said or what Mr. Butler said, they were all engaged in the conversation.

Q. You said the conversation touched on the politics of the Irish nation ; what politics ?

Mr. POWNSONBY.—I beg the witness may understand from the Court that he must speak positively from his present recollection of the subject of the conversation of the company, and that the prisoner joined in the substance of such conversation, because otherwise it was not the conversation of the prisoner.

Lord CLONMEL.—I feel it as you state it—either he must say what it was substantially, or that there was a conversation substantially to this amount.

ATTORNEY-GENERAL.—You have said Jackson joined in the conversation—in what respect did the conversation relate to Irish politics ? **A.** I believe it went to the dissatisfaction of some part of the kingdom with some measures. I am not of this country, my Lords, and know but little of its politics—I have never troubled myself about them, till this business brought me among them—I am afraid I shall be found but a bad repeater of them.

Q. What dissatisfactions ?—recollect what further passed. **A.** It went to the dissatisfaction of some part of the kingdom, and—(a pause). I cannot recollect at this moment—my spirits are so agitated at this moment that I cannot recollect—I am very sorry to detain the Court—I have really lost every idea of where I was.

Q. Were any other politics talked of ? **A.** I don't believe there were any.

Q. Do you recollect any further conversation about politics ?

Mr. CURRAN.—I object to that question ; the witness has already said there was no further conversation on the subject—the witness is produced on the part of the Crown ; the answer to the question is simple ; either he recollects or he does not ; but it is not usual to assist his recollection by summing up what had gone before.

Lord CLONMEL.—I see not the difference on what side he was produced ; if you rely on the summing up of what he said before, stand upon that.

ATTORNEY-GENERAL.—Do you recollect any conversation between Mr. Jackson and Mr. Lewins at any time ? **A.** At any time ? Yes.

Q. Where and when ? **A.** At Hyde's coffee-house.

Q. In what chamber ? **A.** I believe in that where I slept.

Q. Can you recollect what that conversation was ? **A.** That was as to Mr. Lewins asking Mr. Jackson for some written documents or authorities, that he might produce them to Mr. Rowan, in order that Mr. Rowan might with confidence talk to Mr. Jackson.

Q. Who is the Mr. Rowan you speak of ? **A.** Mr. Hamilton Rowan, I think they called him.

Q. Where was he at that time ? **A.** In Newgate.

Q. Can you tell whether Mr. Lewins and Mr. Jackson had any conversation respecting Mr. Rowan before ? **A.** Cannot say to that.

Q. Did you not say that Mr. Lewins came to ask Jackson had he any written document that he might produce to Rowan to convince him he might talk with confidence ? **A.** I did.

Q. What answer did Jackson give to that request ? **A.** I believe he gave him some paper.

Q. Did you see whether he gave any? A. I cannot swear that I saw him deliver the papers into his hand.

Q. Did Jackson tell you whether he had delivered them? A. He did tell me that he had delivered some papers to Lewins, and that he wished he had them again.

Q. Did he tell you why he wished to have them again? A. He said he would not trust them with Lewins if he had them back.

Q. Did he tell you what those papers were? A. He did not.

Q. Do you know whether he ever got them back? A. I believe he did.

Q. Did he ever tell you whether he did or not? A. Not directly in those words.

Q. In what words then? A. I can only say I believe he did get them back again, but I cannot swear that Mr. Jackson said "Mr. Lewins has given me these papers." I have every reason to believe that he did get them back.

Q. Can you recollect how soon after your arrival this conversation was? A. Can you tell me the date of our arrival?

MR. ATTORNEY-GENERAL.—I am not to tell you anything.

WITNESS.—We arrived on the second or third, and I should suppose it was four or five days after, but I can't speak positive.

Q. Had Jackson any interview with Rowan? A. He had,

Q. When had he the first? A. Do you ask me in point of date?

MR. ATTORNEY-GENERAL.—If you recollect how soon after the conversation with Lewins?

A. I believe a day or two after the conversation with Lewins?

Q. You believe!— A. I may have hurried myself in saying believe; I know that he had an interview.

Q. Were you present? A. Yes.

Q. Had he none previous to that that you were present at? A. I believe he had; if that be not evidence, I cannot say more.

Q. Did Jackson say he had an interview? A. He told me he had seen Mr. Rowan.

Q. That was before you were present? A. It was.

Q. And either a day or two after Lewins called for the papers? A. It was.

Q. Did Jackson tell you what passed between him and Rowan at that interview, or any part of it? A. He told me he was much satisfied with Mr. Rowan; that his manners were very much those of a gentleman. I recollect nothing more.

Q. Did Jackson tell you whether he was to see Rowan again or not? A. He said he was.

Q. Did he tell you when that meeting was to be, and what the object of it was? A. I don't think he said what it was—yes—he said it was to breakfast.

Q. He did not tell you the object? A. No, I think not.

Q. Did he tell you who was to be there? A. No.

Q. Did he go? A. Yes, he went there certainly.

Q. How do you know? A. I went with him.

Q. How soon was this after the first meeting? A. Within the compass of three or four days, or a week, certainly.

Q. Was there any other person with Rowan when you were there?

A. I really believe—I can't speak positive, and I'll tell you why—there were two or three meetings, and I can't tell at which—there was a relative of Mr. Rowan, I think his father or father-in-law.

Q. Did that relative continue during the whole time you were there? A. No; he went away.

Q. Do you remember whether there was anybody else? A. I think Mr. Tone was there, I cannot positively swear.

Q. Do you remember what was the subject of the conversation there? A. It was on politics.

Q. What politics? A. Irish affairs.

Q. In what respect? A. A great deal was said about the United Irishmen of which Mr. Rowan was a member; some pamphlets were read, and some other matters talked of between them—and there was a conversation about the dissatisfaction of the people in some part of the kingdom.

Q. Were you present at a meeting with Jackson and Rowan when Tone was present? A. I was.

Q. Did you know, previous to going, who was to be there? A. I now begin to recollect, but I am not positively certain, Jackson said Tone was to be there.

Q. Did you meet any person there? A. I met Mr. Tone there.

Lord CLONMEL—Was that the first meeting or the second? A. I am not sure; but at some meeting I met Mr. Tone there.

Q. Can you tell for what purpose Jackson went to meet Tone there, or for what purpose he was there? A. Mr. Jackson did not tell me for what purpose he was to be there.

Q. Was there any other person present but Tone, Rowan, Jackson and you? A. No.

Q. Can you tell what was the purport of the conversation? A. I shall be very little able to complete an answer to that question, because I did not particularly wish to make myself master of that conversation *in toto*.

Q. Be pleased to inform the court what you do recollect of that conversation. A. There was some paper produced, it was in the hands of Tone and it was read by him and Rowan.

Lord CLONMEL—Read aloud? A. Not so loud that I could understand it.

Mr. ATTORNEY-GENERAL—Did you see that paper again at any time? A. I had it once.

Q. Would you know it again? A. I made no mark on it.

Mr. ATTORNEY-GENERAL—I did not ask you that.

WITNESS.—If I were to see it I would make you an answer whether I would know it or not; before that I cannot give an answer.

Q. You read it? A. No; never.

Q. What conversation passed at the meeting where Tone was? I don't ask you the particular words. A. The conversation among the three was the forming a plan, or talking of a plan, to send somebody to France.

Q. Was any particular person mentioned to go on that errand? A. Mr. Tone was asked to go.

Lord CLONMEL—What—to go? A. To go.

Mr. ATTORNEY-GENERAL.—For what purpose was he to go? A. As I understood——

Q. Did you understand from the conversation for what purpose Tone was to go to France?

Mr. CURRAN.—It is impossible to sustain the question that is put, in law—did he understand—it is not a legal question, and for one reason as good as a thousand, that it would be impossible to indict a witness for perjury upon such testimony.

The COURT.—You need not go further into the objection. (To the witness.) Did you hear the conversation? A. Yes.

Q. Did you understand it? A. Yes, in part.

Q. How do you mean in part? A. They were at one corner of the room, and I in another with a book in my hand, and I did not hear enough to state what they said.

Mr. ATTORNEY-GENERAL.—Do you know for what purpose Tone was to go to France? A. I cannot say, but from my own conjecture.

Q. Did Jackson ever tell you for what purpose Tone was to go? A. Never directly so; but from what I understood and from general conversations, I am well satisfied what the purpose was in my own mind ——

Q. (The Court.) What did he say? A. I cannot repeat it.

Q. What was the substantial import? A. The substantial import was that he was to go to France with a paper as I understand—those papers I never saw.

Q. Did Mr. Tone agree to go? A. At one time he said he would, at another time he receded; he gave his reasons for agreeing to go and for receding.

Mr. CURRAN.—Was Mr. Jackson present? A. At the reasons that he first gave, Mr. Jackson was not present.

Mr. ATTORNEY-GENERAL.—Where was it? A. At Newgate.

Q. Had you a meeting with Tone and Rowan when Jackson was not present? A. Yes.

Q. Did you ever hear Tone give any reasons for going or not going when Jackson was present? A. Yes Sir.

Q. Where was that? A. At Newgate.

Q. Who was present? A. Mr. Rowan, Mr. Tone and I.

Q. Was Jackson present? A. I think he was. [This evidence was objected to.]

Q. Were you at Rowan's lodgings at Newgate at any other meeting than those you have mentioned? A. How many have I mentioned?

Q. Did you ever see any other person besides Tone at Rowan's lodgings in Newgate? A. Yes, I saw Dr. Reynolds.

Q. Was Tone present at either of them? A. Once he was.

Q. How often? A. Once if not twice.

Q. Did you see him there more than once? A. I think twice—'tis a year ago, and I have had that on my mind since, that has shattered my memory very much.

Q. Was Jackson present at either of those meetings that Reynolds was at? A. I don't know how to swear positively—I think he was.

Q. Did you go alone to the meeting? A. I can't tell—I was alone more than once at Mr. Rowan's.

Q. I ask you did you go alone to the meeting at which Dr. Reynolds was present? A. If I could have answered that question, I would have saved you the trouble of repeating it.

Q. What conversation passed between Rowan, Reynolds and Tone when you saw them together?

[Counsel for the prisoner objected to this question, Jackson not being proved to have been present.]

Q. Had you any conversation with Jackson respecting Dr. Reynolds? A. I had.

Q. What was the substance of it? A. The substance of it was, as to his being a proper or an improper person to go to France.

Q. (By the Court.) What did Jackson say on that subject? A. Mr. Jackson said he did not so much approve of him as of Mr. Tone.

MR. ATTORNEY-GENERAL.—Did he tell you why? A. I cannot answer that he told me why—the reason why, I thought, I am convinced —

Q. Did Jackson tell you on what errand Reynolds was to have gone? A. The same of Tone's.

Q. What was that? A. To carry some paper to France.

Q. (By the Court.) How do you know? A. Because the paper, whatever it was, was drawn in Newgate while I was there.

Q. Do you know this from your own knowledge, or did Jackson tell you? A. I cannot say that he told me so *in hæc verba*.

Q. Can you tell substantially what you heard from the prisoner? A. In substance, it was, that he was to go to France with some instructions to the French. It is very difficult to repeat conversations with accuracy; I have heard this in many alternate conversations with Jackson, with Tone, with Reynolds and with Rowan.

MR. CURRAN.—My client is to be affected by no conversation that is not sworn to have been in his presence; the witness says there were some conversations at which he was not present, and therefore it is necessary the witness should swear positively that Jackson was present, when any thing respecting those instructions passed.

WITNESS.—Originally Tone was to have gone, but he left Dublin abruptly without saying whether he would or would not go, and then Mr. Rowan applied to Dr. Reynolds, I believe. If I am not point blank in my answers, you will let me tell why I am not so, for I would not leave the Court under the impression that I would wilfully conceal any thing.

Q. Then Jackson told you that Reynolds was to go to France and take a paper; did you learn from him in conversation what that paper was? A. So many conversations we have had, that it draws me into a maze which of them I shall think of. I was many weeks in company with the prisoner, and the subject was talked of repeatedly. I cannot tell the precise words.

Q. You mistake me, I asked you of conversations in general between you and Jackson. Did he ever tell you for what purpose Reynolds was to be sent to France? A. To take some written paper with him, to the French Convention I believe; I cannot say positively.

Q. Did Jackson tell you at any time or in any conversation for

what purpose Reynolds was to go? A. I don't know how to answer, there are so many answers to be given this question.

Lord CLONMEL.—Did you draw any inference from these conversations for what purpose he was to be sent?

Mr. CURRAN.—I beg your lordship's pardon; but the witness will conceive that he has a right to give his own opinion in answer to that question.

Lord CLONMEL.—Did you understand unequivocally from those conversations what he was to be sent for—did Jackson ever tell you for what purpose, or to whom Reynolds or Tone were to go? A. They were to go to France. I cannot tell in what words to put my answer—I cannot say to whom they were to go; if I was to say one person I might be wrong, for it was my own understanding of it. I understood from general conversations constantly had, that they were to go with some papers to France. I cannot repeat Jackson's words, my own words will be my understanding of his words.

ATTORNEY-GENERAL.—The witness said he had already heard so in alternate conversations with Jackson, Tone, &c.

WITNESS.—I adhere to that still.

Lord CLONMEL.—“With instructions for the French”—for what purpose? A. I shall there catch up what I said before—I understood they were to have written instructions for the French, but what they were I don't know.

ATTORNEY-GENERAL.—To what part of France was the messenger to go? A. I understood they were to go to Paris.

Q. From whom did you understand that? A. From them all.

Q. Did either Tone or Reynolds receive any encouragement to go? A. Yes.

Q. Either Tone or Reynolds in your presence? A. Yes.

Q. By whom? A. By the prisoner and Rowan.

Q. What were the encouragements that Jackson held out to Tone?

A. That he would find the French a generous and, I think, a brave people—a generous people.

Q. Was there any thing in the conversation that led Jackson to say that? A. What brought that speech from Jackson I presume, was owing to the difficulties that Tone raised to his going.

Q. What were they? A. A wife and family.

Q. Were there any others mentioned? A. The loss of opportunities which might very likely arise from his remaining in this kingdom.

Q. Did Jackson give Reynolds encouragement to go, or use any persuasions? A. Not much—he did not like him; he would rather have had Tone.

Q. Do you know the hand-writing of the prisoner? A. Yes.

Q. Do you know whether he had correspondence while here with persons out of this kingdom? A. I do not know what letters he wrote.

Mr. ATTORNEY-GENERAL.—I did not ask you—did he write letters? A. I believe—I know—I remember his writing one.

Q. Was it in his own name, or under another signature? A. I cannot tell.

[Here the witness proved Mr. Jackson's hand-writing to the super-

scription of a letter, dated 5th of April, 1794, and directed to Mr. Stone. He also proved a second paper, (the paper of addresses marked No. 2,) and a third in his (the witness's) hand-writing, dated the 24th of April, 1794, and directed to Benjamin Beresford.]

Q. On what occasion did you write that letter, or by whose directions? A. By the prisoner's directions.

Q. Was it your own composition or a copy. A. It was a copy.

Q. From what? —(a long pause.) A. From a letter in the hand-writing of the prisoner.

Q. Who gave you that letter? A. The prisoner.

Q. Did you take a just copy? A. I believe so.

Q. Whose hand-writing is the superscription? A. Mine.

Q. What was done with it when you copied it? A. It was conveyed to the Post-office.

Q. Who sealed it? A. The seal is so much defaced that I cannot say.

Q. At what time of the day did you get it to copy? A. I believe in the morning.

Q. And did you sit down immediately to copy it, or did you make any other use of it? A. I don't know whether I sent another copy of it.

Q. That is not the question—did you shew it to any person?

A. If I shewed it to any body it was to Mr. Sackville Hamilton.

Q. Did you shew it to him? A. I really believe so.

Q. Did you shew him any letter? A. I think I carried the original of that very letter to him—I verily believe I did: If I should swear positively, and that it turns out otherwise, you will say that I have said wrong.

Q. Then can you recollect that you carried any letter to Mr. Hamilton? A. I do recollect.

Q. Are you sure of that? A. I am.

Q. Did you carry any other letter? A. No, and for that reason I think this was the letter.

Q. (By the Court.) In whose hand-writing was the letter you carried Mr. Hamilton? A. In the prisoner's.

Q. Did you get the letter back? A. Yes.

Q. Did he deliver it immediately, or did you go again for it? A. I went again for it.

Q. What became of the original afterwards? A. The prisoner got it.

Q. Do you know what Mr. Hamilton did with the letter you shewed him? A. He took a press copy of it—I think I was in the room when he took it.

Q. Did you see him take a press copy of any letter? A. I did.

Q. Of what? A. Of the original of this letter.

Q. Now did you bring the original of that letter to any body before you returned it to the prisoner? A. I carried it back from Mr. Hamilton to the prisoner, and did not shew it to any person in the mean time.

Q. Who put the copy into the Post-office? A. I don't know—it was written in the presence of the prisoner, and sent to the Post-office.

Q. (By the Court.) By whose directions? A. By the directions of the prisoner.

[A letter marked B. No. 4, dated 21st and 24th April, 1794, produced.]

Q. In whose hand-writing is the superscription? A. My own.

Q. By whose directions did you write it? A. By the prisoner's.

Q. Was it put into the Post-office? A. I do not know, and it is necessary I should explain; there were several letters sent by the servants of the coffee-house, and some were put in by myself, and I cannot tell which were which.

Q. Did you put in any letters by the prisoner's directions? A. All that I put in were by his directions, but I cannot identify them.

[A letter marked C. No. 5, produced.]

Q. Whose hand-writing is the direction? A. Mine.

Q. By whose directions did you superscribe that? A. By the prisoners.

Q. Look on that which is inside, was the cover sealed up when you got it, or did you see the paper with the cross on it which is enclosed?

A. I never saw it before; do not understand me to say that I knew that enclosure was within the cover I directed.

Q. Look at that second cover—whose hand-writing is that? A. My hand-writing.

[A letter marked D. No. 6, produced.]

WITNESS.—The superscription of the first outer cover is my hand-writing.

Q. By whose directions? A. By the prisoner's.

Q. Look on the second cover—whose is the superscription? A. Mine.

Q. Whose is the writing within?—"Remember me to Laignelot and family?" A. Mine.

Q. By whose directions did you write them? A. By the prisoner's.

Q. Then the first must have been open when you wrote them? A. It was.

Q. Were these done both on the same day or not? A. I know I did direct four or five on the same day, but I am not certain whether I wrote these or not.

Q. Did the prisoner ever prevent you from going to the post-office with letters? A. No.

[The paper marked C. No 5, was produced again, and the writing in the inside cover the witness acknowledged to be his hand-writing.]

Q. Did you see any letter directed to Horne Tooke? A. I did.

[A letter directed to Horne Tooke produced.]

Q. Did you read it? A. I did.

Q. Would you know it again? A. I would—[here the letter was produced to the witness.] I believe that is the same.

Mr. PONSONBY.—Are you sure it is the same? A. It is very hard to swear it is the same, but I verily believe it is the same.

Cross-examined by Mr. CURRAN.

Q. You have known the prisoner many years? A. Yes.

Q. He is a clergyman? A. Yes.

Q. An Englishman? A. I don't know; I believe he is a native of Ireland. I have always thought him an Irishman.

Q. You don't recollect whether Lewins was present at the first meeting you were at? A. I am not certain now.

Q. You have known Mr. M'Nally when he practised at the English bar? A. Yes.

Q. And so had Mr. Jackson? Yes.

Q. He was counsel at Lord Hood's election, and you knew him there, did you not? A. I believe I saw him on the hustings there, three or four times.

Q. It was in consequence of this acquaintance that he asked you to dinner? A. I do not know what his motive was.

Q. You had business to transact here? A. I had several things to transact here.

Q. And you applied to Mr. M'Nally? A. Yes; he has done some business for me.

Q. Must you not think that your recollection is very untenacious as to what happened a year ago, when you cannot recollect whether Lewins was at that meeting? A. I cannot say positively, but I verily believe he was.

Q. You said your memory had been somewhat shattered? A. It has been so, by this transaction.

Q. You have not stated how? A. It grieves my mind more than I can describe, to see that gentleman in that situation: It has made much impression on me of late.

Q. Had you any feelings about yourself? A. I ought to have had them; I have had a great deal of uneasiness.

Q. As to personal danger? A. Yes—I more than once thought my own person in danger.*

Q. Do you consider it out of danger now? A. I think so.

Q. But are you sure, or is it only a general notion—what makes you think so? A. I do not see any one to offend me.

Q. To *offend* you! Is there no particular fact on which you build a good notion of your security? A. No—I do not see any danger in the country now; it is not in that state I expected; it is quite quiet now, and therefore I was not afraid of coming.

Q. Now, did you conceive that the danger I alluded to was from any disturbance in the country? A. I did suppose so.

Q. Then you did not think that I alluded to any personal matter of your own? A. No.

Q. Did nothing pass in your mind to lead you to think that I glanced at it? A. No—I feel no such thing.

Q. Do you not know at this moment that you were considered an accomplice in this business? A. I considered myself so, more than the officers of the crown did.

Q. Do you not come forward to-day from a pure love of justice? A. I come forward with very great reluctance. I am under a very heavy recognizance, which I cannot possibly get over; and it grieves me to appear against a man with whom I have been so intimate.

Q. Did you always freely declare the evidence you would give on this subject when you were interrogated? A. I do not know with

* The Defenders intended to have murdered Cockayne. See Trial of Leary, *post*.

whom I have communicated in this particular way. Whenever any one asked me a question about it, I gave such answer as at the time occurred to me to be right.

Q. What! were you never examined before? A. Yes.

Q. Where? A. At the Castle.

Q. Did you state your evidence there freely and voluntarily? A. Not so voluntarily, very likely, as might have been wished. I gave the evidence, and signed the examinations which Lord Clonmel prepared from my words.

Q. Did you do that voluntarily? A. There was no force used; I wished not to do it.

Q. Was there no menace—no threat made use of? A. I believe I hesitated about signing it as much as I could; I believe Lord Clonmel said I ought to recollect that I was in their power, as to committing me, if I refused to sign it.

Lord CLONMEL.—Recollect yourself.

Mr. CURRAN.—Do—recollect yourself—and state what was said to you touching the power of committing you. A. I hesitated in signing the examination at first, which after I had been sworn by the Privy Counsel, Lord Clonmel was so good as to modify once or twice, in the way I proposed: still I hesitated, on the principle that I was apprehensive I was an accomplice—I was pressed again and again—I evaded signing it, and I believe Lord Clonmel's patience was in some degree wearied by my delay, and he said, I think, "don't you know that you are in our power."

Q. What—did you conceive the danger that you were threatened with was, that you might be charged yourself with the crime? A. I thought so, and I think the Attorney-General did express his opinion that I was not chargeable with it.

Q. You signed the examination there? A. I did not.

Q. Where then? A. At Lord Clonmel's house.

Lord CLONMEL.—Did you sign your examination the day you gave it in? A. No.

Q. How long had you to consider of it before it was signed? A. I had two or three days to consider it.

Lord CLONMEL.—Another thing is of public consequence to be known. Recollect yourself. When you talked of being in anybody's power, was it for not signing the examination, or being threatened as an accomplice if you did not sign? A. For not signing the examination—and I have much thanks to express to your lordship for your humanity in that business.

Mr. CURRAN.—You say you followed Jackson to Ireland in order to counteract any schemes that he might have relative to sending provisions? A. I did; I thought it my duty as a good subject, as having taken the oaths of allegiance three times to the king; and that was my first reason for applying to government in England on the subject.

Q. So your sole reason for undertaking this business was your having taken the oaths of allegiance? A. That was my sole reason for my first application to government in England.

Q. To whom did you apply? A. To Mr. Pitt.

Q. Jackson was your client at that time? A. And had been so for many years.

Q. And your old friend? A. And my old friend.

Q. Added to the duty of your allegiance, was there not some idea of benefit to yourself? A. None.

Q. No expectation? A. I did not expect anything, nor do I expect anything.

Q. There was no promise made of any? A. None by Mr. Pitt or any person, except what I shall now state: what passed between me and Mr. Pitt I feel it my duty to state if I am at liberty. I applied to Mr. Pitt by letter, and acquainted him that there was in England this Mr. Jackson, who had come here, I believed——

Q. Sir, I was asking you about a reward. A. There was none but this—when I stated the circumstances to Mr. Pitt, I mentioned likewise that Mr. Jackson owed me a considerable sum of money on the balance of an account: that if I interfered and should be a sufferer thereby, I should think it hard as to that sum, which Jackson owed me.

(By the Court.) To what amount was he your debtor? A. About £300.

Q. You mentioned that in your letter to Mr. Pitt? A. No; in a conversation.

Q. The amount I mean. A. Yes; Mr. Pitt, I believe, made answer—"You must not be a loser."

Mr. CURRAN.—What was the sum you told Mr. Pitt that he owed you? A. About £300.

Q. By virtue of your oath was that the sum you mentioned? A. I think so; the sum due to me was between £250 and £300.

Q. Did you never tell anybody that you named £600 to Mr. Pitt as the debt? A. Never to my knowledge.

Q. So you then came over to Ireland with Jackson? A. Yes.

Q. You did not understand that you were to be paid this debt, in case you survived Jackson as a loyal subject? A. By no means as you put it.

Q. Yet that was a very likely way to put it out of danger. A. I did not think Mr. Jackson would ever be in the situation he is, or that I would ever be brought here as an evidence.

Q. You are a practising Attorney in England? A. Yes.

Q. You expected no reward for your interfering in this matter? A. I expected to be paid my expenses in coming over here, as I would be paid in any other matter whatever.

Q. So your evidence is, that you thought your old friend and client was going to do wrong, and you left your ordinary business in England to come here, to be a spy upon him for the ordinary expenses of any other witness? A. Yes, Sir.

Q. Did you ever obtain a pardon? A. Yes.

Q. Of what? A. Of all treasons and misprisions of treasons committed in Ireland.

Q. Did you ever get a pardon for any treasons committed in England? A. No.

Q. Were you originally a professional man? A. I never followed any other business.

Q. Did your pardon go to any conviction for perjury? A. No; I believe not—I forgot, or I would have put it in my pocket.

Q. Were you ever tried for perjury? A. I was.

Q. Perjury in what? A. In an affidavit that I swore.

(By the Court.)—When were you tried? A. In the year 1793.

Q. Now, by virtue of the oath you have taken, did you ever tell anybody that that affidavit was in fact false? A. I must apply to the Court, whether I ought to answer that question?

Q. The question is this, you have been indicted and tried for perjury—now I ask, by virtue of your oath, did you confess since the trial, that you were guilty of that offence.

(By the Court.)—You were acquitted? A. Yes, and I hope honourably.

Mr. CURRAN.—Is that your name?—(shews a paper.) A. Yes.

Q. You say you hope you were acquitted honourably? A. I do say so, and I hope I was.

Q. Now, I ask you, by virtue of your oath did you mention to any person that that affidavit was in fact false? A. I do not know how to answer that (*a laugh*) it is not laughing matter—I do not know how to answer it!

Q. Why do you not know? A. I have been acquitted on that affidavit, and as honourably as any man could be.

Q. Did you say it was false? A. My Lords, I think it will be right for me to state some of the particulars of that indictment.

Mr. CURRAN.—Let him answer my question.

Lord CLONMEL.—I think he has a right to open the way for his answer by any explanations—Take your course, Sir.

WITNESS.—The indictment for perjury against me was, because I swore that I attended at the Prothonotary's office in the Temple from one hour to another, it was in an action brought by an attorney of the name of Fletcher against a client of mine; he could not support the action, and there was a summons to tax the costs; there was some dispute as to my charge for attendance. I swore—I had attended at the Prothonotary's office from six till seven on some business; the business was done in fact on the next day that my attendance was made; and the perjury was neither wilful nor corrupt; it was that I could not prove my attendance the complete hour—but the Court on hearing that explanation, and seeing that I could gain nothing by it, directed my acquittal, and the jury acquitted. There is a gentleman of high honour come here from England to vindicate me, and I hope the Court will hear him.

Mr. CURRAN.—Do you know Mr. Nailor? A. Yes.

Q. Did you ever tell him that the affidavit was false in fact? A. I have already stated to the Court how far it was not true. I incautiously swore that I attended an hour. I could not prove the attendance for the whole hour—the business being done the next day, as completely as if the attendance had taken place, and being no advantage to me, or disadvantage to anybody else, I was acquitted.

Q. I ask you again, did you tell Nailor that the affidavit was not true? A. I dare say I did, so far as I say now: I always admitted it, and though I might have made two fatal objections to the indictment, I would not suffer my counsel to take advantage of them, because I was resolved to be acquitted or found guilty on the merits; there was a judgment stated, and they did not produce it; Mr. Garrow, who was

my counsel, immediately said it was fatal, and so Mr. Mainwaring, the chairman said, but I would not take advantage of it.

Q. Had you ever any promise of reward from Mr. Pitt? A. None, but what I mentioned.

Q. Did you state to any one that you had? A. No.

Q. Did you state to Mr. Nailor that you had? A. No.

Q. Did you tell Nailor that you had told Mr. Pitt your debt was £600? A. No, I would scorn it.

Q. You would scorn either to come, or to stay on any pecuniary motive? A. I would—and I call this the severest day to my feelings that I ever saw.

Q. As to that debt of Jackson's—did you think he was likely to pay it? A. I did.

Lord CLONMEL.—Had you any quarrel with the attorney, who prosecuted that indictment? A. No, he ran away a little afterwards with one of the witnesses.

Mr. CURRAN.—Do you know of any of the letters you put into the office? A. If you call for any one letter, I may answer you.

Q. Some of the letters you put into the office had one or two envelopes; did you know their contents? A. No.

Q. Nor the person to whom they were addressed? A. No.

Q. Did you know that there were any orders at the Post-office to intercept those letters? A. I do not know, but I believe there were orders to intercept any letters that should be written by Jackson.

Lord CLONMEL.—How soon did you hear of that? A. As soon as I came here.

Mr. CURRAN.—You knew that before you delivered any letters into the Post-office? A. Yes.

Q. Did you know it before you delivered that letter marked D.? A. I do not know that I did deliver that letter.

Q. Any that you did deliver, you knew would be intercepted? A. Yes.

Q. And as a good subject you put them in with intention that they should be intercepted? A. Yes.

Q. Then you did not put them in with any design that they should go abroad at all? A. I don't know what became of them afterwards.

Q. But you intended they should not go abroad? A. I do not know how the Post-office disposed of them, I do not know that I had made up my mind at all—I knew they would be intercepted—I could not do it with that intention.

Q. Then you did not intend that they should go abroad to the king's enemies? A. Certainly no—I took care to prevent it as much as possible.

Q. Nor that any encouragement should be given to the King's enemies? A. Certainly not.

Q. Nor that information should be given to the enemy? A. Certainly not.

Q. Nor that war should be levied against the King in this kingdom? A. Certainly not.

Q. You said that you went sometimes to Mr. Rowan by yourself? A. I did.

Q. Why by yourself? A. By the direction of Mr. Jackson.

Lord CLONMEL.—Did Jackson know his letters were to be intercepted? A. No. I believe not.

(By one of the Jury). Was your sole business in coming to Ireland to counteract the designs of Jackson? A. I had some business of my own to transact in Ireland, but that was my sole reason in accompanying Jackson.

JUROR.—How comes it then that you have given so very poor an account of him and of the different transactions? A. I have given the best account I could. I gave government as much information as I could with regard to intercepting the letters, and did not expect to be examined as a witness.

Sackville Hamilton.—Examined by the PRIME-SERJEANT.

Q. Were you in any office under government in 1794? A. I was Under Secretary to the Lord Lieutenant for the civil department in the beginning of that year. I am not now in any public situation.

Q. Do you know Mr. Cockayne? A. Yes. He brought me a letter of introduction from Mr. Nepean the Under Secretary in England.

Q. Did he speak to you about any letters? A. On the 25th April, the day after the letters were intercepted, he asked me if they had been intercepted.

Q. Did he shew you any paper? A. He showed me a paper purporting to be an original letter.

Q. When he gave you that paper, what did you do with it? A. I took a press copy of it from a rolling-press which lay in the room.

Q. Have you that press copy? A. Yes. It is not legible throughout.

Here Mr. Curran objected that no part of the paper could be read, it not being legible throughout, which point was conceded.

Isaac de Joncourt.—Examined by the SOLICITOR-GENERAL.

Q. In what employment are you? A. In the Post-office.

Q. Have you access to the letters in the office? A. I have.

Q. What is your department there? I am Deputy-Comptroller.

Q. Did you ever see that paper No. 3? A. Yes, I found it in the office the night of 24th April.

Q. What induced you to take notice of it? A. I was ordered to have attention to letters of that address.

(By the Court.) You found it in the usual place where letters are deposited that are intended to be conveyed? A. I did.

Q. Your orders were from government? A. They were.

Q. What were your directions? A. To open all letters directed to Mr. Benjamin Beresford. I had also orders to open several others.

Q. Did you ever see that paper No. 4? A. Yes. It is directed to Lawrence and Co.

Q. Had you orders to open letters to that address? A. I had.

Q. Was there any enclosure in it? A. There was this directed to Mr. Stone. I also stopped this letter (No. 5,) directed to Texier Angely and Massac, at Amsterdam. There is an enclosure in that to Monsieur Daudebuscaille and Co. No. 6, directed to Monsieur

Chapearouge, at Hamburgh. There is a sealed enclosure in it with a cross on the back of it.

Q. Where did you find these letters? A. I found them sealed in the ordinary course in the same office.

Q. Did you find them all on the same day? A. Yes; on the 24th April.

Q. What did you with them? A. I gave them to Mr. Hamilton. [Here the Clerk of the Crown read the papers marked A. and B. as follows:—]

(A)

A Monsieur Beresford chez. Bourcard and Co. Basle, Switzerland.

Dublin, 24th April, 1794.

SIR,

You are requested to see Mr. Madgett directly, and inform him that this evening two papers containing the opinion of the first counsel in this kingdom relative to his family lawsuit are sent off to him by the post. Mr. Madgett's friend has been wholly occupied since his arrival here in obtaining those opinions, attending different consultations and collecting what is now sent as a real case in point. Your brother-in-law with whom the friend of Mr. Madgett here had frequent conferences, approves the opinions as containing the opinions of all good and honest lawyers on the subject. Madgett may therefore proceed for the recovery of his family fortune by hostile or pacific means as he and his friends think proper.

I am, Sir,

Your humble Servant,

THOMAS POPKINS.

N.B.—Your brother-in-law has written to your wife in order to find out the sex of your child. I am told that it is a very fine boy, the picture of his father, sound in every part except the brain.

(B)

Messrs. Lawrence and Co. at their Coal Wharf, Rutland Place, near Blackfriars Bridge, London, enclosing a letter directed to Mr. Stone.

Dublin, 21st April, 1794.

DEAR SIR,

YESTERDAY your letters were delivered to me, I am glad to find that the patterns I sent have reached the persons for whom they were intended; as from the silence of the parties I concluded that the outriders had neglected the delivery of them. I do not see anything in the late change of fashions which alters my opinion of the stability of the new institution, particularly as the principal persons who superintend it, I never have been able to detect in the slightest deviation from the line of consistency. The rest have at all times been suspected of sinister motives and tergiversation.

The state of manufactures in England which your friend drew out, and which you so obligingly gave, is very just, as far as it related to England; but the principles of the people, with regard to trade, their

opinion as to a change, to be brought about by industry and co-operating exertion are so totally different, as to throw all comparison out of the question. I am promised by a very eminent and sensible manufacturer a statement of the manufacturing branches here which will gratify you.

I shall obey the instructions of your sister-in-law, by not writing to her, which does not however preclude me from requesting, that when you write you will remember me in the most affectionate manner to her and Mr. Nicholas. Let them know where I am, and that I am doing everything in my power to serve Mr. Nicholas, and give him satisfaction in bringing his affairs to the issue he wishes. His friends here have it in agitation to send a person, on whom his family and he can depend, to him with copies of such covenants and leases, as will shew the readiness of his sister-in-law here to come immediately to terms with him; and I shall advise a junction of interest, rather than a tedious Chancery suit. I wish you would copy this part of my letter and send it to him; a few days will decide whether the person goes or not; if he should, he will go from me and the family here with full power to treat with Mr. Nicholas, finally settle the terms, and thus put an end to enmity and litigation. I am sure the medium of a third person is all that is wanting to bring the parties perfectly to accord. The sister-in-law is admirably disposed to a reconciliation. I hope this will be effected, as one interview is better than a thousand letters. If the person should go, Mr. Nicholas must receive him as he deserves, and treat him as he will merit. I had written the above during the negotiation with a person to go to Mr. Nicholas. He has, this morning the 24th of April, decided that his private affairs will not permit him. I shall therefore send a statement of the family expectations and situation here drawn up by as eminent a pleader as the gentleman who composed the paper in England.

I shall set out for Cork in a day or two, from which place you shall hear from me; and should you receive any intelligence from or our friends, I intreat you to communicate it to me under cover to John Cockayne, Esq., to be left at the Post-office, Cork. I wish you would write the first post day to your sister-in-law, and desire her to inform Mr. Nicholas, that to-morrow I send off two letters for him from his friends here, containing opinions thoroughly considered and well digested by the first counsel here; as such he may shew them, and the family may act accordingly. As my time has been wholly employed in collecting them, and as they come from the first and most enlightened sources, let your sister-in-law desire Mr. Nicholas to look out for them as matters of consequence: they contain the real state of the case.

I sincerely wish you happiness, and that of your family, and am truly,

Yours,

THOMAS POPKINS.

Do not fail to communicate to Mr. Nicholas by the means of your sister-in-law what I have written.

Thomas M'Lean.—Examined by Mr. FRANKLAND.

Q. What is your business? A. I am one of his Majesty's messengers.

Q. Where do you reside? A. In London.

[A paper was then produced to him.]

Q. Did you find that anywhere? A. Yes, in the possession of William Stone, of Oldford in Middlesex.

Q. On what occasion? A. I was sent with Lauzun another messenger, to take him into custody, and we found it in a drawer in his room at his house in Oldford.

Cross-examined by Mr. PONSONBY.

Q. Did you find that letter in Ireland? A. No: it was found at Oldford in England.

[This letter, No. 2, was then offered to be read.]

Mr. PONSONBY.—I object to this letter being read in evidence, because it was not found in the prisoner's custody; because it was not found in the county in which the treason is laid in the indictment. But it is found in another kingdom, and therefore cannot be read here. In Hensey's case, 1 Bur.,* Lord Mansfield said, "It is certain that some one overt act must be proved in the county, where the indictment is laid: indeed if any one be so proved in that county, it will let in the proof of others in other counties." But it is not asserted nor can it be supported, that papers found in another kingdom can be read.

Lord CLONMEL.—We think they offer it too soon: They must prove their overt acts, and then read this paper by way of aggravation.

Mr. FRANKLAND.—We offer this paper in evidence in order to confirm the other evidence we have offered, and mean to give to establish the overt acts. Here is a paper in the hand-writing of the prisoner, and it cannot be contended that papers in his hand-writing are not admissible.

Lord CLONMEL.—Suppose a letter had gone to France, to which place it had been directed, and was found there, could it not be read here?—beyond a doubt nothing is more certain than that *scribere est agere* in treason.

Mr. PONSONBY.—My Lords, that rule is to be taken with restrictions, and never was laid down absolutely but in Algernon Sidney's case,† whose attainder was reversed by act of parliament; and Judge Foster says,‡ the rule is true with proper limitations, and from his observations the rule does not apply in this case.

* Howell's State Trials, vol. 19, p. 1345; and 1 Burr 647: 3 Starkie Evidence, 1097. Stone's Case, 6 Term Reports, 527.

† Howell St. T. vol. 9, p. 817. The grounds of the reversal of the attainder in Sydney's case were these:—An illegal return of jurors; the denial of lawful challenges for want of freehold; the insufficiency of legal proof to establish the charge of treason; that a paper found in Sydney's closet, supposed to be his hand-writing, was not proved by the testimony of any of the witnesses to have been written by him, &c., 2 Phillips State Trials, 111. Mr. Phillips remarks—"On the subject of these writings, the strong and decisive objection against their admissibility is that before-mentioned (which it is remarkable is not noticed in the act of reversal), namely, that they were not proved to be connected with any design, or in any manner to relate to the treasonable practices charged in the indictment. If they had been written by Sydney, relative to those treasonable practices, they might have been read in evidence against him though they had never been published."

‡ Foster 198.

LORD CLONMEL.—What use do the counsel for the Crown make of this paper?

MR. ATTORNEY-GENERAL.—My Lords, the overt act laid is, that the prisoner encouraged the enemies of the King, and adhered to them, and that he compassed the death of the King. Then the proof to establish the charge is this, that two papers were sent, directed in the terms, and enclosed in the envelopes your Lordships have seen. If we shall prove that these letters were sent to the Post-office for the purpose attributed to them, then the fact will be established. We have proved them to have been written by Cockayne under the directions of the prisoner; that they were addressed to persons at Amsterdam and Hamburg. In order to give further scope and effect to that evidence, and to prove that those letters were intended to be sent abroad we offer another paper in evidence to shew, that Jackson, having a correspondence with persons abroad, did send this letter to Stone in England (with whom we have proved he had also a correspondence) informing him of his arrival in Ireland, and stating in another, that the goods and wares were arrived, shewing that Stone was the medium through which the correspondence passed. We do not mean to give this letter as a substantive evidence standing alone by itself, but going with the others in support of the charge. With regard to the rule of evidence, papers in the prisoner's hand-writing are not to be disputed. If it were necessary that they should be found upon him, all the letters stopped in the Post-office, upon which persons have been hanged, were improperly received. The distinction is that if the paper be not in the party's hand-writing, it must be found in his possession to connect it with his intention. This paper is not offered as evidence of an overt act, but as evidence coming from the party accused, and offered to be used concurrent with other pieces of evidence to support the overt act, and when it shall be read, we shall be at liberty still further to confirm them all, and therefore unless some case be cited, which we are not apprized of, upon the argument, and principle, this evidence ought to be received and the paper read.

MR. PONSONBY.—My Lords, I submit, that this paper should not be read. This like every other thing offered in evidence, is legal evidence, or it is not;—there is no such thing in offering evidence to a court, as saying, it is part of the evidence to prove the overt act, to go connected with others, so as to make all together legal evidence. But it must be legal in the first instance. If the gentlemen are to establish the overt act by nine pieces of evidence, every one of them ought to be admissible evidence in point of law, because after the nine are received, they are not to say, that all of them taken together will make legal evidence. This paper is not proved to have been published by the prisoner, neither was it within the kingdom of Ireland, much less in the county where the prisoner is indicted.* See what the distinction was in Lord Preston's case.† He and two others had procured a smack to carry them away; their papers were seized; among the papers was found a scheme to lay before the King of

* 1 East P. C. 102, 104, 125; 3 Starkie 1097, last edition.

† 12 Howell St. Tr. 726.

France. It was insisted that no overt act was proved, but his taking boat in Middlesex; the papers were not seized in Middlesex, and were therefore not sufficient to prove any overt act in that county.

Mr. Justice DOWNES.—Lord Preston was taken in Kent; the paper was found in Kent: he was tried in Middlesex, and the overt act was laid there; the Court did not stop evidence arising in Kent from being given in Middlesex. He took boat in Middlesex, and that was connected with the transaction in Kent.

Mr. PONSONBY.—I submit that the Court did establish the point I contend for, because it was from the circumstance of his taking boat in Middlesex that made it competent to the Crown to produce evidence of papers found in Kent. The Court excluded everything done in Kent, and said, that his having the papers upon him in Middlesex, and taking boat there, justified the admission of the evidence.

Mr. SOLICITOR-GENERAL.—There is nothing in the report to shew that the papers were in his possession, when he took boat in Middlesex.

Lord CLONMEL.—See what the evidence is. Assimilate it to the King v. Hensey. This is either introductory evidence, or corroborative. Introductory of what?—to evidence of one of the overt acts laid in the indictment—applicable either to the charge of adhering to the King's enemies, or compassing the King's death. How then does it come before the Court? The overt act is, that this man gave information by letter to the King's enemies to invade this country; they prove a letter from him to a correspondent in a masked language, as they say; the prisoner may explain it, and shew that a real transaction subsisted. This letter is to shew an intercourse and correspondence between Stone and the prisoner at the bar. A letter has been proved in the same sort of language, all in the hand-writing of the prisoner, with certain marks and cyphers, explanatory of what was the intercourse between them. This is introductory of evidence bearing upon the charge in the indictment. Can it be denied to be the hand-writing of the prisoner, or that it was directed by him. I know not what the contents of it are. But it is a paper in the hand-writing of the prisoner, and found in the possession of his correspondent, to whom he wrote.

Mr. PONSONBY.—I am sensible of the observations of the Court. But my Lords, this is a mere unpublished paper, unconnected with any circumstance to give it authenticity. No act appears to have been done, and with regard to papers written, they are only to go in evidence where the rule can apply of *scribere est agere*, where anything has been done to carry it into effect. But here it is found in the possession of a third person, and there is no evidence to show how he came by it.

Mr. Justice DOWNES.—I do not see a necessity for adding a word to what my Lord Clonmel has said. This evidence is introductory and it is also corroborative of what Cockayne said. I do not feel the objection as having any weight, that it is out of the county, or in another kingdom. It is not to prove the overt act itself that this letter is offered:—the overt act must be proved in the county; but that being done, evidence in other counties may be admitted, otherwise in Lord Preston's case they would have excluded everything but what could have been proved in Middlesex.

Mr. Justice CHAMBERLAIN.—I do not consider the evidence now offered, as evidence of an overt act, but explanatory of that, which proves the overt act. Two papers have been proved, and this is produced to shew, *quo animo*, the former were written. They are marked with a cross and other emblems, and this letter is offered to shew the prisoner's intention in sending those others. To say, that letters or papers found in one place to explain the intention of the act done in another, could not be admitted, would be dangerous. Lord Preston's case is a strong one, because there the evidence found in Kent was admitted to shew *quo animo* he took boat in Middlesex. This paper is in the hand-writing of the prisoner, and the only question is whether it may not explain the intention of his conduct in Ireland.

[Here was read the paper, No. 2.]

A Cross †

To Monsieur Daudebuscaille.

(The outward cover.)

To Messrs. Texier, Angely et Massac,
a' Amsterdam.

(The inside cover.)

A Cross †

(Outward cover.)

To Mr. Chapeaurouge,
Merchant,
Hamburgh.

(To each is added a recommendation to forward the inclosed.)

Edward Lauzun.—Examined by Mr. FRANKLAND.

Q. Do you hold any employment? A. I am one of his Majesty's messengers.

Q. Did you ever see that paper?—(shewing him a letter, No. 1.)
A. Yes, I found it in the apartment of William Stone, at Oldford.

[Here read the paper No. 1.]

To Mr. William Stone, London.

Dublin, 5th April, 1794.

DEAR SIR,

OWING to a variety of incidents, which I will explain when I have the pleasure of seeing you, I have been prevented writing until the present moment. Some very excellent friends, to whom I owe most singular obligations, being apprized of my arrival, have endeavoured to render me service—and, were their power equal to their wishes, I am confident I should experience the benefit of their good intentions: Accepting, as I do, the will for the act, they have a claim on my gratitude.

I must request you not to make use of any of the addresses I left you, the price and nature of the article being entirely changed.

You will have the goodness to enclose your letter or letters to me,

under a cover thus directed—John Cockayne, Esq., Hyde's Coffee-house, Dame-street, Dublin.

Pray write immediately.

I request, my dear Sir, that you will dedicate an instant, on the return of the post, in acknowledging the receipt of this letter; and if you have any letters from the family at Shields which regard their affairs in this country, you cannot too soon enclose them to me, as the assizes at Cork are about to commence.

In the course of a very few days, I will give you some information respecting the bills which you commissioned me to present.

I hope your lady enjoys better health, and with very sincere wishes for her and your happiness, I request you to believe me your real friend,

THOMAS POPKINS.

Oliver Carlton.—Examined by the ATTORNEY-GENERAL.

Q. Do you know the prisoner? A. Yes. I assisted in arresting him on a warrant from Lord Clonmel for high treason.

Q. Where did you arrest him? A. At Hyde's coffee-house.

Q. In what part of the house? A. Up two pair of stairs, back, in bed.

Q. At what time? A. Ten in the morning, 28th April.

Q. Did you find any papers in the room? A. I found several papers on a table and others in a trunk in the room where he slept.

[The papers marked E. F. G. L. N. O. shewn to the witness.]

Q. Do you know these papers? A. Yes. I found these on Mr. Jackson's table.

Cross-examined by Mr. PONSONBY.

Q. Was the door shut? A. It was shut, but not locked.

Mr. FRANKLAND.—We will prove a letter written by Mr. Stone, addressed to Mr. Thomas Popkins.

Mr. CURRAN.—I object to this evidence; my doubt is as to reading a letter, merely because it was found in the chamber where Mr. Jackson was in bed; it is not in the hand-writing of Mr. Jackson.

Mr. PRIME-SERJEANT.—This letter was found on Mr. Jackson's table, and it is proved that he was the Mr. Thomas Popkins directed to.

Mr. ATTORNEY-GENERAL.—Besides, the letter to which this was an answer, was found on Stone.

The COURT.—You need not trouble yourself: it is good evidence.*

Q. (By a Juror.) Was there another bed in the room?

WITNESS.—No.

Mr. JACKSON.—Sir, there was another bed in the room.

WITNESS.—If there was, I did not observe it.

Mr. ATTORNEY-GENERAL.—Did the prisoner at the bar say any thing about those papers? A. He was very much agitated—he jumped out of bed and ran about the room in great confusion—he said he did not care about any but one particular paper; and he asked me what right I had to take his papers; I told him my authority; that I had a Judge's warrant.

* Foist. 196; Hensley's case, 1 Burr. 644; Tooke's case, East. P. C. 119; Stone's case, 6 T. R. 527.

Mr. JACKSON.—I beg leave to ask this question. In the first place, the witness is wrong as to the fact of the bed. Now, let me ask you, did I, or did I not, when you were taking the papers, voluntarily say, there is the key of my portmanteau—take it? A. You did.

Mr. JACKSON.—You regarded two closets, and said you would have them open? A. Yes.

Mr. JACKSON.—And I opened them for you? A. Yes.

Mr. ATTORNEY-GENERAL.—Were any of the papers you have now seen, in that trunk that you have mentioned? A. No—the papers there, were of no significance, I think —

Mr. CURRAN.—Do you not believe that that paper which Mr. Jackson expressed such anxiety about was a family paper, and entirely of a private nature? A. I do not know.

Mr. JACKSON.—Mr. Attorney knows that there was such a paper among those that came under his inspection.

Mr. ATTORNEY-GENERAL.—I do not know—there were some papers that related to private affairs, and I believe they have been returned, or at least not examined.

Lord CLONMEL.—Was there among them a paper that could raise anxiety in the prisoner?

ATTORNEY-GENERAL.—I think there was one that reasonably might raise some anxiety in him.

Reuben Smith.—Examined by Mr. ATTORNEY-GENERAL.

Q. Do you know Mr. Stone of Oldford? A. Yes.

Q. Have you seen him write? A. Yes, frequently.

Q. Look at that paper (shews witness a paper) whose hand-writing is that? A. I believe it is the hand-writing of Mr. Stone of Oldford and of Rutland-place.

Q. Look at the signature—whose hand-writing is it? A. The signature is the name of Stone reversed; but I think the words W. Enots are Mr. Stone's hand-writing.

Q. Whose hand-writing is the body of the letter? A. Mr. Stone's.

[The Clerk of the CROWN then read this letter (marked L) as follows:]

Mr. Thomas Popkins.

DEAR SIR,

I YESTERDAY received yours of the 5th inst. I am happy you find yourself so agreeably situated where you are. I have received no letter for you, but the day after you left me, I received one to say your first letters were received. I have received another since, in which mine was acknowledged which I wrote the post after Gillet was with us, but no mention was made of any other.

I have not made use of what you left with me. What a wonderful change there is in the family. Will it tend to good? I confess I think better of it now than before. I want what you possess a knowledge of the several branches of it to form a proper judgment of the conduct in the last fracas.

Political affairs seem taking a great turn if we take into our view the great whole. I cease to wonder at anything, we seem I think to be the only party resolved to go on with vigour. The King of

Prussia publicly avows his disinclination, and I think the French as well as the Emperor shew it by their inaction; but to what can the proscription now going forward in Paris tend, will it purify them and make their conduct less exceptionable and their government more fixed and permanent. I really feel a kind of awe in thinking on those subjects, and see every day new matter to astonish me.

We are all tolerably well, and I remain,

Yours very truly,

W. ENOTS.

April 11th, 1794.

P.S.—Since writing the above, I have received a letter in which is, "I have received our friends letters, and you must tell him, that having given them to the proper people, he must in future address his friend Nicholas and not me;" and in the conclusion he particularly requests he may not be written to.

I feel particularly happy that the several letters have been received, and I trust that even in the peculiar circumstances of the family they will produce proper effects.

MR. ATTORNEY-GENERAL.—We shall now read the paper, No. 5, there are two covers, both directed by Cockayne; the first is directed, "A Messrs. Texier, Angely et Massac, A Amsterdam." Within this is enclosed a second cover directed, "A Monsieur M. Daudebuscaille, A Amsterdam"—and within this is the paper which we shall now read, enclosed in a cover marked on the outside with a large black cross, and within which is written, "Remember me to Laignelot and all our friends."

[The Clerk of the Crown then read this paper (marked C) as follows:]

THE situation of Ireland and England is fundamentally different in this—the government of England is national, that of Ireland provincial. The interest of the first is the same with that of the people—of the last directly opposite. The people of Ireland are divided into three sects; the Established Church, the Dissenters, and the Catholics; the first infinitely the smallest portion, have engrossed besides the whole church patronage, all the profits and honours of the country exclusively, and a very great share of the landed property. They are of course aristocrats, adverse to any change, and decided enemies of the French Revolution. The Dissenters, which are much more numerous, are the most enlightened body of the nation, they are steady republicans, devoted to liberty and through all the stages of the French Revolution, have been enthusiastically attached to it. The Catholics, the great body of the people, are in the lowest degree of ignorance, and are ready for any change, because no change can make them worse. The whole peasantry of Ireland, the most oppressed and wretched in Europe, may be said to be Catholic. They have within these two years received a certain degree of information and manifested a proportionate degree of discontent by various insurrections, &c. They are a bold, hardy race, and make excellent soldiers. There is nowhere a higher spirit of aristocracy than in all the privileged orders, the clergy and gentry of Ireland, down to the very lowest, to countervail which, there appears now a spirit rising in the people which never existed before, but which is spreading most rapidly as appears by the

Defenders as they are called, and other insurgents. If the people of Ireland be 4,500,000, as it seems probable they are, the Established Church may be reckoned at 450,000, the Dissenters at 900,000, the Catholics at 3,150,000. The prejudices in England are adverse to the French nation under whatever form of government. It seems idle to suppose the present rancour against the French is owing merely to their being republicans; it has been cherished by the manners of four centuries and aggravated by continual wars. It is morally certain that any invasion of England would unite all ranks in opposition to the invaders. In Ireland, a conquered, oppressed and insulted country, the name of England and her power is universally odious, save with those who have an interest in maintaining it: a body however only formidable from situation and property, but which the first convulsion would level in the dust; on the contrary, the great bulk of the people of Ireland would be ready to throw off the yoke in this country, if they saw any force sufficiently strong to resort to for defence until arrangements could be made; the Dissenters are enemies to the English power from reason and from reflection, the Catholics from a hatred of the English name; in a word, the prejudices of one country are directly adverse of the other, directly favourable to an invasion. The government of Ireland is only to be looked upon as a government of force, the moment a superior force appears, it would tumble at once, as being founded neither in the interests nor in the affections of the people. It may be said, the people of Ireland shew no political exertion. In the first place, public spirit is completely depressed by the recent persecutions of several. The Convention act, the Gunpowder, &c. &c. Declarations of government, parliamentary unanimity, or declarations of grand juries, all proceeding from aristocrats, whose interest is adverse to that of the people, and who think such conduct necessary for their security are no obstacles; the weight of such men falls in the general welfare, and their own tenantry and dependants would desert and turn against them; the people have no way of expressing their discontent *civiliter* which is at the same time greatly aggravated by those measures, and they are on the other hand in that semi-barbarous state which is of all others, the best adapted for making war. The spirit of Ireland cannot therefore be calculated from newspaper publications, county meetings, &c. at which the gentry only meet and speak for themselves. They are so situated that they have but one way left to make their sentiments known, and that is by war. The church establishments and tythes are very severe grievances, and have been the cause of numberless local insurrections; in a word, from reason, reflection, interest, prejudice, the spirit of change, the misery of the great bulk of the nation, and above all, the hatred of the English name resulting from the tyranny of near seven centuries, there seems little doubt but an invasion and sufficient force would be supported by the people. There is scarce any army in the country, and the militia, the bulk of whom are Catholics, would to a moral certainty refuse to act, if they saw such a force as they could look to for support.

Mr. ATTORNEY-GENERAL.—The other letter directed to Hamburgh, is in the same words with this; we have also proved two other papers in the same words, found on Mr. Jackson's table.

Lord CLONMEL.—Read part of each of those papers found on Jackson's table ; let their identity appear in proof.

[The Clerk of the Crown read part of each of the papers marked (D) and (E) accordingly, which appeared to be counterparts of the paper marked (C) and (D) directed to Monsieur Chapeaurouge, a Hamburgh. (E E) two copies found on Jackson's table.]

Mr. ATTORNEY-GENERAL.—We will now prove the paper found by Mr. Oliver Carleton on Mr. Jackson's table, which is The State of England that has been so much alluded to.

[Here the Clerk of the Crown read the letter marked (F) as follows :]

EXCLUSIVE of positive information of the temper of the country, it may be known by people at a distance by the following signs :

There are no petitions against the war.

There are courtly verdicts given by juries with few exceptions.

There are no mobs, though much distressed.

There is much readiness to enlist as soldiers.

There is much quietness in being impressed on the part of seamen.

The votes of parliament are nearly unanimous, though the parliament has run through half its length, and the members of the house of Commons look to their re-election.

The stability of Lord Chatham continues in defiance of all his neglects.

Terror pervades the friends of liberty who would soon shew a different appearance if they were countenanced by the majority of the people.

The temper of England is in favour of the first French Revolution but not of the second. However, on the whole it shews symptoms of being adverse to the present situation of the war, not from disliking its principle, but from seeing little profit in it. At the same time, though they think its main object unattainable (namely the overthrow of the present French system) they would be more earnest for peace had they either suffered enough, or did they think the present French Government sincerely disposed to peace.

There are many persons attached to the principles of the French Revolution in England, if they are reckoned numerically, but they are as nothing compared to the great mass of the people who are indisposed to them.

In Scotland the proportion of Democrats is increasing, but they are as yet a small minority.

Ireland will follow the Democracy of Scotland, each of these countries wants time only to convince itself in its own way, but it will not be convinced by a French invasion.

If France were to invade England every man would turn out from good will or from fear, and the few who are discontented would be quelled with ease, as the French citizens were by La Fayette in the Champ de Mars, or the disaffected lately by the Commissioners in Alsace.

There could be but one line of conduct for Englishmen to pursue, should the country be invaded. They must defend it.

Wars being but the means of attaining peace, and the well-meaning among the subjects of the Confederates, being told that the French

are so adverse to peace, or ask such preliminaries, that it is in vain to treat with them; it would be highly useful if France declared after any new successes which she may hereafter attain,

Her aversion to conquest,

Her disposition to peace,

Her desire that other nations should govern themselves.

Her determination of changing this system if the war against her is continued. And it would be useful also if every convenient opportunity were taken of declaring that her present government is revolutionary, and that the constitution of June last will be acted upon at the peace; and also if she declared her regret at the necessity of using harsh measures, and now and then employed philanthropic language which has an astonishing effect in pacifying the English and indeed pacifying Europe.

It would tend much to conciliate the minds of the English were the Convention to decree the liberation of all the English now in a state of arrest unaccused of crimes, and restoring to them their property, at the same time allowing them to leave the country within a certain space of time.

It would tend also much to create an aversion to the war, were the Convention to decree the terms on which they would make peace. This conduct would be magnanimous, and if they did not hold out terms extravagant, the people of this country would not hesitate to speak their aversion to a continuance of the war.

It would be very advisable to have copies of the more important decrees of reports lodged at Havre to come hither by neutral vessels for the purpose of being translated.

MR. ATTORNEY-GENERAL—We will now read another paper proved to have been found on Mr. Jackson's table; a note from Mr. Hamilton Rowan to Mr. Jackson.

[Here the Clerk of the Crown read a paper marked (O) as follows:]

— Jackson, Esq., Hyde's Coffee-house, Dame-street.

WILL you be so good as to share my breakfast with me to-morrow at nine, which I am particularly desirous of—as I find a party made for dinner cannot take place. I need not say that by nine I mean nine or as near it as you can, for I have hopes that a third person will in that case take his share before he leaves town, which I find he is forced to do in the course of the morning.

A. HAMILTON ROWAN.

Newgate, April 15th, 1794.

MR. ATTORNEY-GENERAL—We shall read also Mr. Tone's note, found also on Mr. Jackson's table.

[Here the Clerk of the Crown read a paper marked (N) as follows:]

— Jackson, Esq.

MR. TONE presents his compliments to Mr. Jackson, and is extremely concerned that indispensable law business hurries him out of town to-morrow morning. He is of course deprived of the honour of attending Mr. Jackson at dinner, but will embrace the first moment of his return, which he hopes will be in a week, to pay his respects to Mr. Jackson.

Tuesday Morn.

MR. ATTORNEY-GENERAL.—We shall offer one piece of evidence more; the letter written by John Holford Stone of Paris, recommending the prisoner to Mr. Horne Tooke; it was found on the table in the prisoner's room when he was arrested.

MR. CURRAN.—This is not the best evidence the nature of the case admits; if Mr. Stone wrote any letter, he is the person to prove it.

MR. ATTORNEY-GENERAL.—I offer it as a paper found in the possession of the prisoner; but added to that, I wish to prove that it is the hand-writing of Mr. Stone of Paris. If Mr. Stone was here he could not be examined as to this letter, because it would be to ask him whether he was a conspirator: it is to me a matter of indifference whether it is proved or not—I offer a witness to prove his hand-writing—I care not about the event.

LORD CLONMEL.—I should be inclined to admit this evidence if it were necessary, but I should think it is not.

[Mr. Attorney-General being of opinion that the letter was material evidence, it was read as follows:]

John Horne Tooke, London.

Paris, 25 Nivose—Second Year of the
Republic, one and indivisible.

MY DEAR FRIEND,

THE circumstances of the two countries have hitherto prevented me from giving or receiving any information respecting you, for as there have been few or no other means of communication than the post, I have had the traitorous correspondence bill too much before my eyes, to hazard your tranquility, though I had nothing to fear for my own; this however will be delivered to you by a gentleman, a citizen, I should have said, to whom you have been heretofore known, and I introduce him as one who will be able to give you the most accurate information of what is doing, and has been done here—and recommend him also as the person to whom you may confide your own sentiments respecting the state of affairs in this country or your own.

As I know that your prudence keeps some pace with your patriotism, you may be satisfied that I am sure of the principles of the man I thus confidentially introduce to you, and thus much you may repose on me. As to the rest, I leave you to arrange it, wishing myself a third in the party.

And now my patriotic friend, let me offer you my warmest and most heartfelt congratulations on the immense prospect of public happiness which is opening before us; you are amongst the small number of those who in the worst of times have never despaired of the cause of liberty, and you are the only one who when the name was but a barbarism amongst us, taught the great principles of sacred equality which we have so completely reduced to practice. I look forward with transport and joy, to the moment when the doctrines which you have preached shall receive their due accomplishment, when the various parties of ministerialists and oppositionists, dissenters and churchmen, nobles, priests and kings shall sink into one undistinguished mass of ruins, and nothing shall be seen or acknowledged but the people, the sacred voice of the people.

The little commission which you gave me to the milliner, I have properly executed; it was to have been sent to the ladies the last spring, but the untowardness of events at that time hindered the completion, and I could not find also any one to whom I could properly entrust it, the fashion being a little changed; if nothing unforeseen happens to hinder it, you may expect to have it over in two months at farthest; and under happier auspices than the last spring; since the fashion is so much improved, and I have taken all the precautions and even more than you intrusted me with at Tuffins; but the sending it as you may suppose will depend on circumstances.

I leave to the friend I introduce to you the relation of the history of this country for the twelve months last past. You will have fallen into a thousand errors on the subject of our politics, as I, though on the spot, have done, but I think I now see land.

God bless you, we shall meet under happier circumstances than our last, and drink a cool bottle of good Burgundy under the shade of our trees, an early day in the next summer, if you can spare so much time from your legislative or ministerial avocations.

Health and fraternity,

J. H. STONE.

MR. ATTORNEY-GENERAL.—As some attempt has been made to discredit the evidence of Mr. Cockayne, we will now produce a witness to establish his credit.

MR. CURRAN.—There has not been any evidence called on our side to impeach the character of Mr. Cockayne. The gentlemen themselves shew that they have a good opinion of his credit, when they want to hoop him before he is cracked. I never saw such a course before.

MR. ATTORNEY-GENERAL.—Then you shall see it now, and I hope with success; I think we have a right to call evidence to a witness's character, whether it has been attempted to be impeached by other evidence, or by something coming out on his cross-examination.

MR. CURRAN.—I am driven, I find, to state the ground of my objection;—I did not think it could be resisted. I conceive the uniform rule of law to be, that if the credit of a witness is impeached, that witness may purge the impeachment by contradicting the allegations of the impeachment; but I submit it that this rule can hold only where evidence *aliunde* is resorted to, to impeach the credit of the witness. That the nature of this case makes the application of the rule unnecessary; the rule is, that evidence may be called to contradict the impeachment—now, on what is the impeachment here, if any there be, founded?—on the evidence of the man himself. I never heard of evidence being called for a man to rebut a man's own evidence—to call a witness to rebut something, is to call a witness contrary to something; then the witness has been impeached—how? he was asked, were you tried for perjury? Yes, said he, and acquitted; and honourably; then the evidence offered goes to rebut Cockayne's own evidence. This then is an unusual and extraordinary proceeding, and I trust therefore that you will be of opinion that this evidence ought not to be received.

LORD CLONMEL.—We are of opinion that this man may be produced to this transaction, for what is it to do? it is to produce several

witnesses to corroborate the same fact. Cockayne says he was tried for perjury, and acquitted; now, the jury may believe that he was tried and not believe one word of what he said about his acquittal; then you produce evidence to supply this.

MR. JUSTICE CHAMBERLAIN.—I think the testimony of Cockayne has been attempted to be impeached; whether with success or not, I do not know; but the cross-examination could have had no other object; now is he not to be corroborated in a fact material to establish his credit?*

[The Court having overruled the objection, the witness was called.]

Robert Mounsey.—Examined by the SOLICITOR-GENERAL.

Q. Where do you live, Sir? A. In Castle-street, Holborn, in the city of London.

Q. Of what profession are you? A. I am an attorney and solicitor of Westminster Hall.

Q. What paper is that which you hold in your hand? A. It is an office copy of the indictment and acquittal of John Cockayne who was examined here this day.

Q. Were you present at the trial of Cockayne? A. I was.

Q. Have you compared that copy? A. I did both ways.

Q. And saw it attested by the proper officer. A. Yes.

Q. Do you recollect any circumstances that passed upon the trial? A. I recollect what Cockayne related, and everything he has said is perfectly true.

Q. Do you recollect anything else? A. Mr. Garrow who was his counsel, said that they had not produced a copy of the judgment, and that Cockayne could take advantage of it, but Cockayne said he would not have any advantage taken, but that he would either be found guilty or acquitted on the merits.

Q. How did the prosecutor conduct himself? A. He seemed to be very forward, and Mr. Mainwaring, who was the chairman, and one of the Prothonotaries who was to tax the bill of costs, called on Fletcher, the prosecutor, and desired him not to be so very forward.

Q. Did any friends attend Cockayne on his trial? A. Mr. Impey, who wrote Impey's Practice, Mr. Lowton the Marshal, and several respectable people came forward as his friends.

Q. Was the acquittal on the merits? A. It was. He was acquitted on the prosecutor's evidence, without calling a witness.

Cross-examined by Mr. PONSONBY.

Q. Did Cockayne ever appear for you as a witness in any cause at York? A. Never.

Q. Is he a particular acquaintance of yours? A. He is not.

Q. What is your motive in coming forward this day? A. Because I thought him very ill used.

Q. Had you not any other business here? A. None other but to give an account of this transaction.

* Bishop of Durham v. Beaumont, 1 Camp, 207; R. v. Clarke, 2 Starkie's c. 241.

John Cockayne called up by Mr. CURRAN.

Q. In what part of the house did you lie? A. I lay on the same floor with Mr. Jackson.

Q. Who usually got up first? A. I was generally up before him.

Q. Have you heard there were any papers found in his chamber? A. I have.

Q. Had you any papers in his chamber the evening before? I should think not.

Q. Did you ever say to any person that you had the papers which were found there in your hands at twelve o'clock the night before?

A. I never did.

Mr. CURRAN.—My lords, and gentlemen of the jury, I am sure the attention of the court must be a good deal fatigued. I am sure, gentlemen of the jury, that your minds must of necessity be fatigued also. Whether counsel be fatigued or not, is matter very little worth the observation that may be made upon it. I am glad that it is not necessary for me to add a great deal to the labour, either of the court, or the jury. Of the court I must have some knowledge—of the jury I certainly am not ignorant. I know it is as unnecessary for me to say much, or perhaps anything to inform the court, as it would be ridiculous to affect to lecture a jury of the description I have the honour to address. I know I address a court, anxious to expound fairly, and impartially, the law of the country, without any apprehension of the consequences, and effect of any prosecution. In the jury I am looking to now, I know I address twelve sensible and respectable men of my country, who are as conscious as I am of the great obligation to which they have pledged themselves by their oath, to decide upon the question fairly, without listening to passion, or being swayed by prejudice—without thinking of anything except the charge which has been made, and the evidence which has been brought in support of that charge. They know as well as I do, that the great object of a jury is to protect the country against crimes, and to protect individuals against all accusation, that is not founded in truth. They will remember—I know they will remember, that the great object of their duty is, according to the expression of a late venerated judge in another country, that they are to come into the box with their minds like white paper, upon which prejudice, or passion, or bias, or talk, or hope, or fear, has not been able to scrawl anything. That you, gentlemen, come into the box, standing indifferent as you stood unsworn.

In the little, gentlemen, that I shall take the liberty of addressing to you, I shall rest the fate of it upon its intrinsic weight. I shall not leave the case in concealment. If there be no ground on which the evidence can be impeached, I will venture to say I will neither bark at it, nor scold it, in lieu of giving it an answer. Whatever objection I have to make, shall be addressed to your reason. I will not say they are great, or conclusive, or unanswerable objections. I shall submit them to you nakedly as they appear to me. If they have weight, you will give it to them. If they have not, a great promise on my part will not give anticipated weight to that whose debility will appear when it comes to be examined.

Gentlemen, you are empannelled to try a charge. It consists of two offences particularly described in the indictment. The first question is, what is the allegation? In the first branch, the prisoner is indicted upon a statute, which inflicts the pains and penalties of high treason upon any man, who shall compass or imagine the king's death. The nature of the offence, if you required any comment on it, has been learnedly, and I must add, candidly commented upon by Mr. Attorney-General in stating the case. The second part is, that the prisoner did adhere to the king's enemies. By the law of this country, there are particular rules, applicable to cases of prosecutions for high treason, contradistinguished from all the other branches of the criminal law. The nature of the offence called for this peculiarity of regulation. There is no species of charge to which innocent men may more easily be made victims, than that of offences against the state, and therefore it was necessary to give an additional protection to the subject. There is an honest impulse in the natural and laudable loyalty of every man, that warms his passions strongly against the person who endeavours to disturb the public quiet and security; it was necessary therefore to guard the subject against the most dangerous of all abuses, the abuse of a virtue, by extraordinary vigilance. There was another reason:—there is no charge which is so vague and indefinite, and yet would be more likely to succeed, than charging a man as an enemy to the state. There is no case in which the venality of a base informer, could have greater expectation of a base reward. Therefore, gentlemen, it was necessary to guard persons accused from the over hasty virtue of a jury on the one hand, and on the other from being made the sacrifice of the base and rank prostitution of a depraved informer. How has the law done this? By pointing out in terms, these rules and orders that shall guide the court, and bind the jury in the verdict they shall give. The man shall be a traitor, if he commits the crime, but it must be a crime of which he should be proveably attaint, by overt acts. And in order that there be an opportunity of investigation and defence, the features of the overt acts should be stated of public record in the very body of the indictment. Justly do I hear it observed, that there cannot be devised a fairer mode of accusation and trial, than this is. Gentlemen, I have stated to you, how the foundation of it stands in both countries, touching the mode of accusation and trial. I have to add to you, that in Great Britain it has been found necessary still further to increase the sanction of the jury, and the safety of the prisoner, by an express statute in King William's time. By that law it is now settled in that great country, that no man shall be indicted or convicted, except upon the evidence of two witnesses, and it describes what sort of evidence that shall be, either two witnesses swearing directly to the same overt act laid in the indictment; or two witnesses, one swearing to one overt act, and the other to another overt act of the same species of treason. So that in that country, no man can be found guilty, except upon the evidence of two distinct credible witnesses, credible in their testimony, distinct in their persons, and concurring in the evidence of acts, of one and the same class of treason; for it must be to the same identical treason, sworn to by both witnesses; or one witness deposing to one act of treason, and the other to another act of

the same class of treason; that is the settled law of the neighbouring kingdom, and I state it to you emphatically to be the settled law; because far am I from thinking, that we have not the blessing of living under the same sanction of law, far am I from imagining that the breath which cannot even taint the character of a man in England, shall here blow him from the earth—that the proof, which in England would not wound the man, shall here deprive him of his life—that though the people in England would laugh at the accusation, yet here it shall cause the accused to perish under it. Sure I am that in a country where so few instances of a foul accusation of this sort have occurred, the judges of the court will need little argument to give effect to everything urged to shew, that the law is the same in Ireland as in England.

Lord CLONMEL.—Do you mean to argue that the statute of William is in force in Ireland?

Mr. CURRAN.—No, my lord; not that the statute of William is in force—but I mean to argue, that the necessity of two witnesses in the case of treason is as strong here as in England. It is the opinion of Lord Coke, founded upon a number of authorities; the opinion of Lord Coke, referring to a judicial confirmation of what he says; the opinion of Lord Coke controverted, if it can be said to be controverted by the modest and diffident dissent of Sir Michael Foster. It is laid down by Lord Coke, that he conceives it to be the established law, that two witnesses are necessary to convict: 3 Inst. 26. "It seemeth that by the ancient common law, one accuser or witness was not sufficient to convict any person of high treason—and that two witnesses be required, appeareth by our books, and I remember no authority in our books to the contrary." I know of no judicial determination in our books to the contrary of what Lord Coke here states: the common law is grounded upon the principles of reason. I consider the statutes of Edw. VI., and William III., as statutes which had become necessary from the abuses occasioned by a departure from the common law. After the statute of Edw. VI., expressly declaring the necessity of two witnesses, the courts had fallen into, perhaps a well intentioned departure from the meaning of the statute of Edw. VI., so far that the place of two witnesses was supplied in evidence by any thing that the court thought a material additional circumstance in the case; and to the time of William III., such a departure had prevailed, and this was thought sufficient to discharge every thing respecting the obligations of the statute. It became necessary therefore to enact, and by that enactment to do away the abuse of the principle of the common law, by expressly declaring that no man should be indicted or convicted except by two witnesses to one overt act, or one witness to one act, and a second to another act of high treason of the same species. And there seems to me to be a sound distinction between the case of high treason, and of any other crime. It is the only crime which every subject is sworn against committing: It is the only crime which any subject is sworn to abstain from. In every other case the subject is left to the fear of punishment which he may feel, or to the dictates of his conscience to guard himself against transgressing the law; but treason is a breach of his oath of allegiance, and is so far like the case of perjury: and therefore in the case of

treason, no man should be convicted by the testimony of a single witness, because it amounts to no more than oath against oath : so that it is only reasonable there should be another to turn the scale ; and therefore it is that I conceive Lord Coke well warranted in laying down this rule, a rule deduced from general justice, and even from the law of God himself. Gentlemen, what I am now stating, I offer to the court as matter of law.

But what were these witnesses ? Witnesses in all cases beyond exception, in their personal circumstances, and in their personal credit. Therefore it is the law, that no man shall be found guilty of any offence that is not legally proved upon him by the sworn testimony of credible witnesses. Gentlemen, I have submitted my humble ideas of the law—I have stated the charge which the prisoner was called upon to answer : Let me now state the overt acts, which in this particular case are necessary to be proved. The first is, that the prisoner did traitorously come to, and land in Ireland, to procure information concerning the subjects of Ireland, and to send that information to the persons exercising the government in France, to aid them in carrying on the war against the King. I do not recollect that Cockayne said one single word of the prisoner's coming here for such purpose. The second overt act is, that the prisoner did traitorously intend to raise and levy war, and incite persons to invade Ireland with arms and men ; that he did incite Theobald Wolfe Tone to go beyond seas to incite France to invade this Kingdom ; that he did endeavour to procure persons to go to France ; and that he agreed with other persons, that they should be sent to France for the same purpose. Having stated these overt acts which are laid in the indictment, you will be pleased to recollect the evidence given by Cockayne. Cockayne did not say that the prisoner came over here for any such purpose as the overt act attributes to him ; then, as to the overt act, of endeavouring to procure persons to go to France for the purpose of giving information to the enemy ; the witness said he met Mr. M'Nally ; he had known him in England ; Jackson was a clergyman ; he had known him also. Cockayne had professional business with Mr. M'Nally. Mr. M'Nally paid them a courtesy which any decent person would have been entitled to. They dined at his house, and met three or four persons there ; they talked of the politics of Ireland ; of the dissatisfaction of the people ; but not a syllable of what is stated in the indictment ; not one word of any conspiracy ; Cockayne did not pretend to be able to give any account of any specific conversation ; he went to Newgate ; Rowan was then in confinement ; he sometimes went by himself ; sometimes met Tone, sometimes Jackson ; he gave you an account of encouragement ; what was it ? Was there any thing to support this indictment ? Let me remind you that you are to found your verdict on what the witness says and you believe, and not on what learned counsel may be instructed to state. Then what does the witness say ? He admits that he did not hear all the conversation. The crying injustice must strike you, of making a man answerable for a part of a conversation, where the witness did not hear it all ; but take it as he has stated it, unqualified and uncontradicted : how high was he wrought up by it ? He heard talk of somebody to go to France ; he was to carry papers ; he heard an

expression of instructions to the French; what French? What instructions? It might be to French manufacturers; it might be to French traitors; it might be to the French King; it might be to the French Convention. Do I mean to say that there was nothing by which a credulous or reasonable man might not have his suspicion raised, or that there was nothing in three or four men huddling themselves together in Newgate and talking of an invasion? No, but my reasoning is this—that your verdict is to be founded on evidence of positive guilt established at the hazard of the personal punishment of the witness, you are not to pick up the conjectures either of his malignity or credulity. I say that this man stands in defiance of your verdict, because it will be effected by nothing but that irresistible evidence on which alone it ought to be founded. But what was the fact which Tone was to do or any other person? It was an illegal one. By a late act, an English subject going to France is liable to six months imprisonment. By a clause in the same statute the crime of soliciting a person to go is also punishable. The encouraging any person to go to that country was therefore exposing him to danger, but whether it was a motive of trade, or smuggling, or idle adventure is not the question for you. It is whether the intention was to convey an incitement to the French to make a descent on this kingdom, and endeavour to subvert the constitution of it. You have a simple question before you—has even the prosecutor sworn that he endeavoured to do so? I think not. The next overt act charged is, that he did compose and write a letter in order to be sent to William Stone, in which he traitorously desired Stone to disclose to certain persons in France the scheme and intention of Jackson, to send a person to inform them of the state of Ireland, for the purpose of giving support and effect to an hostile invasion of this country. You have heard these letters read. You must of necessity look on them in one or two important and distinct points of view. The first perhaps that will naturally strike you is, what are these letters? Do they sustain the allegations of the overt act? Are they letters requiring Stone to inform the Convention, of this country being in such a state as to encourage an invasion? Does that paper support this allegation? God help us! gentlemen of the jury! I know not in what state the property or life of any man will be if they are always to be at the mercy, and to depend on the possibility of his explaining either the real or pretended circumstances on which he corresponds with persons abroad. The letters are written apparently upon mercantile subjects—he talks of manufactures, of a firm, of prices changed, of different families, of differences among them, of overtures to be accepted of, of disputes likely to be settled by means of common mediation: what is the evidence on which you can be supported in saying that manufactures mean treason—that Nicholas means the war minister of France—the sister-in-law Ireland—that “the firm has been changed,” means Danton has been guillotined, but that makes no alteration in the state of the house, meaning the circumstances of the revolution—that the change of prices and manufactures means any thing else necessary to give consistency to the charge of treason. Give me leave to say that this ludicrous and barbarous consequence would follow from a rule of this sort, the

idlest letter might be strained to any purpose. The simplicity of our law is, that a man's guilt should be proved by the evidence of witnesses on their oaths, which shall not be supplied by fancy, nor elicited by the ingenuity of any person making suggestions to the wretched credulity of a jury that should be weak enough to adopt them. I come now to this. A letter produced imports on the face of it to be a letter of business, concerning manufactures—another concerning family differences. In which way are they to be understood? I say with confidence, better it should be to let twenty men, that might have a criminal purpose in writing letters of this kind, escape, than fall into the dreadful alternative of making one man a victim to a charge of this kind not supported by such proof as could bring conviction on the mind of a rational jury.

I do not think it necessary to state to you minutely, the rest of these allegations of the overt acts. The charge against the prisoner is supported, and this is perhaps the clearest way of calling your attention to the evidence, either by the positive evidence of Cockayne as to these facts, or by the written evidence which stands also on his testimony alone. Touching actual conspiracy he said nothing: somebody was to go to France—he knew not for what—he had an idea on his mind for what it was—but never from any communication with Jackson. There have been other letters read in evidence. Two of them contained duplicates of a sort of representation of the supposed state of Ireland. Cockayne says that he got the packet from Jackson, that he himself wrote the directions; one, addressed to Amsterdam, the other to Hamburg. They were read, and they contain assertions, whether true or false I do not think material, of the state of this country. If material at all, material only in their falsehood. The public are satisfied that these allegations are false. It is known to every man in this country, and must be known with great satisfaction by every honest man, that it is not in that state that could induce any but the most adventurous and wicked folly to try an experiment upon it. It is unnecessary for me to comment on the opinions contained in that paper; there is a matter more material, and calling more loudly for your attention. It is stated to be written with the purpose of inviting the persons governing in France to try a descent upon Ireland. This paper is evidence to support that charge; you have heard it read. On what public subject have you ever heard six men speak and all to agree? Might not a stranger, in a fit of despondency imagine that an invasion might have a fatal effect on this country? It is not impossible but if ten men were to make a landing, some mischief might happen. Then again, what do I mean to argue? Is it that this letter bears no marks of the design imputed to it? No such thing. It is a letter that the most innocent man might write, but it is also such a one as a guilty man might write, but unless there was clear evidence of his guilt, he would be entitled to your verdict of acquittal. Though it was not expressly avowed, yet I cannot help thinking that it was meant to lay some little emphasis on certain names which I have met with in the newspapers—I am sure I have met the name of Laignelot in the debates of the Convention—I have met the name of Horne Tooke and Stone in the English papers. I have read that Horne Tooke was tried for high treason and acquitted.

That Stone made his escape into Switzerland. I believe it is said that there is a person of that name in confinement in England at present. But let me tell you, you are not to draw any inferences from circumstances of this kind against the prisoner, let me tell you it is the guilt of the man and not the sound of names by which his fate is to be decided.

Other papers have been read. One seems to contain some form of addresses. A letter said to come from Stone has been read to you. The letter to Beresford, said to be written by Jackson, has also been read to you. I have stated the material parts of the evidence. I have endeavoured to submit my poor idea of the rule by which you ought to be guided. I see only one remaining topic to trouble you upon; it appears to me to be a topic of the utmost importance. And, gentlemen, it is this. Who is the man that has been examined to support this charge? One witness. I beseech you to have that engraven on your minds. The charge in all its parts stands only on the evidence of Cockayne; there is no other evidence of any conversation, there is not a material letter read in this case that does not rest upon Cockayne's evidence, and that I am warranted in this assertion you will see to a demonstration when I remind the Court that he was the only witness as I recollect called to prove the hand-writing of Jackson. On his testimony alone must depend the fact of their being his hand-writing, of the inuendoes imputed to them or the purpose with which they were sent.

Gentlemen, I am scarcely justified in having trespassed so long on your patience. It is a narrow case. It is a case of a man charged with the highest and most penal offence known by our law, and charged by one witness only. And let me ask, who that witness is? A man stating that he comes from another country, armed with a pardon for treasons committed in Ireland, but not in England whence he comes. What! were you never on a jury before? Did you ever hear of a man forfeiting his life on the unsupported evidence of a single witness, and he an accomplice by his own confession? What! his character made the subject of testimony and support! take his own vile evidence for his character. He was the foul traitor of his own client. What do you think now of his character? He was a spy upon his friend. He was the man that yielded to the tie of three oaths of allegiance, to watch the steps of his client for the bribe of government, with a pardon for the treasons he might commit; and he had impressed on his mind the conviction that he was liable to be executed as a traitor. Was he aware of his crime? His pardon speaks it. Was he aware of the turpitude of his character,—he came with the cure—he brought his witness in his pocket. To what? To do away an offence which he did not venture to deny; that he had incautiously sworn that which was false in fact, though the jury did not choose to give it the name of wilful and corrupt perjury. Gracious God! Is it then on the evidence of a man of this kind, with his pardon in his pocket, and his bribe—not yet in his pocket—that you can venture to convict the prisoner. He was to be taken care of. How so? Jackson owed him a debt—"I was to do the honourable business of a spy and informer, and to be paid for it in the common

way—it was common *acreable* work—treason and conspiracy—I was to be paid for it by the sheet.” Do you find men doing these things in common life? I have now stated the circumstances by which, in my opinion, the credit of Cockayne ought to be reduced to nothing in your eyes. But I do not rest here. Papers were found in the chamber of Mr. Jackson—the door was open, and by the bye, that carelessness was not evidence of any conscious guilt—the papers were seized—that there were some belonging to Jackson is clear, because he expressed an anxiety about some that are confessed not to have any relation to the subject of this day’s trial. I asked Cockayne if he had any papers in Jackson’s room the night before he was arrested—he said not. I asked him if he had told any person that he had—he said not. Gentlemen, the only witness I shall call, will be one to shew you that he has in that sworn falsely. And let me here make one observation to you, the strength and good sense of which has been repeated an hundred times, and therefore rests on better authority than mine. Where a witness swears glibly to a number of circumstances, where it is impossible to produce contradictory proof, and is found to fail in one, it shall overthrow all the others. And see how strongly the observation applies here—he swore to a conversation with Jackson as to what he said and did, well knowing that Jackson could not be a witness to disprove that, unless the good sense of the jury should save his life, and enable him to become in his turn a prosecutor for the perjury. If on a point of this kind this man should be found to have forsworn himself, it cannot occasion any other sentiment but this, that if you have felt yourselves disposed to give anything like credit to his evidence where he has sworn to facts which he must have known, it is the key-stone of the arch in his testimony, and if you can pluck it from its place, the remainder of the pile will fall in ruins about his head. I will produce that witness—but before I sit down, permit me, gentlemen of the jury, to remind you, that if every word which Cockayne has here sworn were sworn in Westminster-Hall, the judges would immediately have said—there is not anything for the jury to decide upon; the evidence of incitement rests on him alone, there is no second witness; so does the transaction of the letters; for De Joncourt’s testimony could not have satisfied the statute; it was not evidence to the same overt act as affecting Jackson personally, nor was it evidence of any distinct overt act, it was merely that species of evidence, the abuse of which had been the cause of introducing the statute act of William; a mere collateral concomitant evidence. The overt act was writing and putting into the post-office, that was sworn to by Cockayne, and if he deserved credit, would go so far as to prove the fact by one witness. See what the idea of the statute is; it is that it must be an overt act brought home to the prisoner by each of the two witnesses swearing to it. If De Joncourt’s evidence stood single, it could not have brought anything home to Jackson. Cockayne swore the superscription was his writing; he put the letters into the office. De Joncourt said nothing but that he found in the office a letter which he produced, and which Cockayne said was the one he had put into it. This observation appears to collect additional strength from this circumstance. Why did they not produce Tone? It is said they could not. I say they could. It

was as easy to pardon him as to pardon Cockayne. But whether he was guilty or not is no objection. Shall it be said that the argument turns about and affects Jackson as much as it does the prosecutor? I think certainly not. Jackson, I believe it has appeared in the course of the evidence, and is matter of judicial knowledge to the court, has lain in prison for twelve months past, from the moment of his arrest to the moment of his trial. If he is conscious that the charge is false, it is impossible for him to prove that falsehood; he was so circumstanced as that he could not procure the attendance of witnesses; a stranger in the country, he could not tell whether some of the persons named were in existence or not. I have before apologized to you for trespassing upon your patience, and I have again trespassed—let me not repeat it. I shall only take the liberty of reminding you, that if you have any doubt, in a criminal case doubt should be acquittal, that you are trying a case which if tried in England would preclude the jury from the possibility of finding a verdict of condemnation. It is for you to put it into the power of mankind to say, that that which should pass harmlessly over the head of a man in Great Britain shall blast him here;—whether life is more valuable in that country than in this, or whether a verdict may more easily be obtained here in a case tending to establish pains and penalties of this severe nature.

[William Humphrys was then called several times for the prisoner, but did not attend.]

MR. POWSONBY.—Mr. Curran has gone so fully into the case as to leave very little for me to say upon the subject. Gentlemen of the jury, the Court will, I am sure, tell you that the laws of England and Ireland know no single authority so great as that of Sir Edward Coke. I am not afraid to be contradicted, when I say, that in point of learning, practice, experience and reputation, as a lawyer, no man has arisen in these countries whose authority holds an equal place with his; and he lays down the common law to be, that no man can be convicted of high treason but on the evidence of two witnesses. I do freely admit that later lawyers have held his doctrine to be erroneous, and that in truth the common law is, that on the evidence of a single witness, a man may be convicted of high treason. I admit that Sir Michael Foster and Serjeant Hawkins say so. I admit Foster an authority, but I do not admit Hawkins an authority. But I do not admit them or any other man so great an authority as Lord Coke—and he expressly lays it down, that on the evidence of one man only shall no person be convicted of high treason. I am ready to read the words of Foster: he says, page 233, Ir. Ed. "It hath been generally agreed and I think upon just grounds (though Lord Coke hath advanced a contrary doctrine), that at common law one witness was sufficient in the case of treason, as well as in every other capital case." No man will deny that Coke stands higher than any other lawyer, and no man will deny that that difference subsisted between him and those men. But whatsoever may be the opinion of Foster, who wrote in the reign of Geo. II. he was giving his opinion on a case perfectly out of the way at that time—on a case on which it was totally unnecessary for him to give an opinion—on a case that had not nor could not have been drawn into controversy for eighty years before; because that early in the reign of King William there passed an act for

the regulation of trials in high treason. This was an act declaratory of the common law as was the St. Ed. III. ; for no lawyer will say, that the statute of treasons, the best statute in our statute books is anything else than declaratory of the common law of England. Lord Coke says expressly that one witness was not sufficient, others have differed from him ; but the stat. W. III. put the question out of dispute for the future, because it enacts that no man be convicted of high treason, but on the oaths of two credible witnesses. Whatever might have been the opinion of lawyers before, it is clear from the time of passing that statute, the question was put out of doubt, because two witnesses are now expressly required. Therefore, when Foster wrote that book, he was giving an opinion more as an antiquarian than a lawyer, because he was examining a subject which could not come into discussion so long as the statute of William III. remained. If the legislature had not conceived Lord Coke right in his idea of the common law, why should they have thought it necessary to pass that act? either they held that no man could be convicted without the testimony of two witnesses, or they thought proper to enact it for the first time. They could have but this reason for it, that if the law was not so, it ought to be so. Cockayne is the only witness that has appeared to you in this case, for as to the others they have been merely examined to the finding of papers here, delivering letters there, or something of that sort. None of them were examined to prove any criminal charge whatever against Jackson. The written letters are proved only by Cockayne, the conversations are proved only by Cockayne, in short the alleged treason in this case is proved only by Cockayne. And, gentlemen of the jury, it demands serious consideration on your part, whether, even supposing the law of Ireland to be such as that a man may be convicted on the evidence of a single witness, Cockayne be such a one as will justify you in finding a verdict of conviction on his testimony. By the law of England there must be either two witnesses to the same overt act, or one of them to one, and another to another overt act of the same treason ; but if there be two distinct treasons of divers kinds in one bill of indictment, one witness to one, and another to another of the said treasons would not be sufficient within the act. How is the treason alleged here? There are two species charged, compassing the king's death and adhering to his enemies. Do they produce two witnesses to any one overt act, as the law of England requires? No. But they allege two distinct treasons, and produce but one witness to prove both ; in England you must have two witnesses to one species of treason, here it seems, there needs but one witness to two species of treason. Does Cockayne appear to you in such a light as to justify you in your consciences to take away a man's life on the credit of his evidence? See the account he gives of himself, he said he thought Jackson had some intention of sending to the enemy some articles that were prohibited, and he came here to prevent him. Was it necessary to prevent Jackson from sending goods from Ireland, that he should be allowed to come hither, instead of being stopt in England? Was there no other way of doing that but by his coming with him to Ireland? Because, if he said truly, he thought that the best way to prevent Jackson's sending goods from hence, was to let him come hither. But it is plain from his own swearing that that

could not be his object. It must have been to forward him in the execution of his criminal intentions in order to betray him, and then to be rewarded for his treachery. I know not in what light to look on Cockayne. Shall I call him what the law calls an approver, was he in his secrets? Did he join him? Did he afterwards betray him? If so, the old maxim of our law was that no man for any crime could be convicted on the evidence of such a person. I allow that latter practice has departed from that rule, and that the evidence of an approver which was formerly driven from the bar is now received. But of all the evidence known it is not only the most odious but the weakest, and no judge ever tries such a case, who does not tell the jury so. Now, in what light does Cockayne stand? if he is to be believed, he must have known Jackson's projects: in intention he must have been as criminal as Jackson—and this for the purpose of betraying his confidence and being rewarded for it; for this purpose he becomes an approver against the man with whom he had been engaged—and this man was the only witness. If there were criminal plots existing, why not examine others? Why not examine Tone, or Lewins? it was as easy to pardon them as Cockayne: if their story was true, why did they rest the credit of it on Cockayne, when they might have had other witnesses?—and then, they might have had, not only more, but better evidence—then they might have had the evidence of men, though equally criminal, yet not equally disgraceful—of men who had not upon their oaths, and before the eyes of the jury, been base enough to betray their fellow traitor; they might have had evidence on which the jury might have rested: a pardon would have made them competent—their conduct would have cleared them from the business—can you think that they would have brought this case forward, supported by such a witness as Cockayne alone, if they could have ventured to produce the rest; if their story was true, they would either have prosecuted the rest for treason, or have pardoned them in order to produce them here.

Cockayne tells you that when the letters were put into the post-office, they were not indeed intended to be sent abroad; they were never to go out of the country, for he himself knew they would be stopt; yet the indictment avers that they were intended to be sent out of the country, and were delivered at the post-office for that purpose.

It is difficult indeed to lay much stress on the evidence of Cockayne—his memory was singularly bad—he was present at many meetings—at various conversations—yet, he could remember nothing—he understood, he thought, he believed; but he could not swear. What was the fact? Was it that he was present at these meetings, these conversations, and yet did not remember them? No, the object of this hesitation, this pretended delicacy, was, that when he should come to the material parts of the case, they might so far work on your minds as to induce you to give credit to him. Do you think he would not have sworn to hang Jackson, if he thought it material to get his money from Mr. Pitt? No reward did he require, no reward did he ask, but only the amount of a debt due to him by the prisoner, that was all he expected, all he desired to receive. Now, can you imagine that he would have hesitated but from an affected delicacy,

that he might reserve himself for what he thought the most important parts of the case.

The character of Cockayne has been supported by a witness—the character of Cockayne has been given by himself—he was shocked at the base idea of being accused of perjury; he was happy in declaring that he thought that a greater reproach than to have led his friend into a crime—the greatest crime he could commit—and to have betrayed him when he had done so. What a witness! who glowed with indignation at the imputation of perjury—and gloried in murder—for it was positive murder, if he knew the man meant to do this, to encourage him in it, to support him in it, and then to betray him. Do you feel such a man as this, a witness on whose testimony you ought to take away the life of a fellow-creature? In England, had he been a witness in such a case as this, he must have been sent off the table, and the jury must have been discharged; but by crossing the sea, he is to become a good witness; and he can take away the life of a man in Ireland, though in England he could not touch a hair of his head. If the court shall be against me and say that one witness is sufficient, I submit: but I say to you, gentlemen of the jury, examine your hearts well, and say, will you be satisfied on the evidence of such a witness, to take away the life of any man.

LORD CLONMEL.—You have heard what has been said by your counsel; would you wish to add anything to what they have said?

MR. JACKSON.—My lord, I wish to consult my counsel whether it would be proper.

After some conference with his counsel, Mr. Jackson said he would not trouble the court.

MR. PRIME-SERJEANT, in reply.—My lords, and gentlemen of the jury. I do not know that I ever in my life rose with more anxiety to discharge that duty which I owe to the public—an anxiety lest I should leave anything undone, which that duty demanded, and an anxiety, lest in the discharge of that duty I should transgress those limits which the humanity and conscience of an advocate prescribe to him, when he speaks in a case, where the life of a party is at stake. Therefore I conjure you, gentlemen, to discharge your minds from everything you may have heard before this day, upon the subject of the trial; from every impression, which the mention of such a crime may have occasioned, and that you will listen to the court, who are bound to declare the law as you are to decide the fact, and take from their opinion what the law is. I have heard this subject treated for two hours past as if this trial were in Great Britain, and that you were called upon, not to decide the case upon law existing in this country where the trial is had, but as if it were had in the sister kingdom. To borrow an expression from the witness, I should feel this the severest day I ever experienced, if that were to be the case: or that I could bring myself to suspect that such language would be used, because I should be controlled by those having power so to do. There is nothing clearer, than that, by the law of Ireland, one witness believed is sufficient to convict, and I conjure your lordships with the utmost earnestness, if I am wrong in the law, that you will correct me. It will become my duty to state the evidence, and, under the direction of the court, those facts, upon which you, gentlemen, are to

form your judgment. The prisoner stands indicted for two distinct species of high treason: first, for compassing and imagining the death of the King: next, for adhering to the King's enemies; and that I may not, by any possibility, be guilty of misleading your judgments, I shall refer in the course of the observations I shall make, to that which is acknowledged to be the first authority. The cases of compassing the death of the King, or adhering to his enemies, are the only instances in the law, where the will and intention, prosecuted by an act, whether successful or not, are equivalent to the deed. The moment the wicked intention of compassing the death of the King, or adhering to his enemies is followed by an act, which you shall believe to have been in prosecution of those schemes, the guilt is complete: the measure of the iniquity of the party is full. Wherefore for the advantage of the prisoner, for the charge is strong against him, it is necessary that the indictment upon which he was arraigned should state all those specific facts from which the intention is to be drawn; for, as an overt act of that intention, no evidence can be given, that is not stated specifically by the indictment; and no evidence can be given, that is not evidence of the act laid. You will see, gentlemen, the advantage which the prisoner derives from this; before he is put to plead, he is apprized of everything alleged against him; directly the contrary of that, which occurs in any other criminal prosecution. The use I make of that is, that you may see whether there has been any use made by the prisoner of the notice which he had of the charge brought against him.

Having thus stated what I conceive to be the law with the utmost scrupulousness, let me state the overt acts, and see whether you are satisfied upon them. The single question for you, gentlemen, is, whether the facts alleged were done by the prisoner? and 2dly, if done, whether they relate to the charge brought against him. I should be much better pleased, I declare most solemnly, that I did not think there was evidence to support any of the overt acts laid in this indictment, and that I am sorry to say, there is evidence for your consideration upon every one of them. You, gentlemen, will weigh it with every possible attention, the life of a fellow-creature being at stake. Mr. Cockayne is the principal, but not the only witness in support of the overt acts. Nothing can make so strong an impression upon the mind of a jury as the manner, the air, and temper with which testimony is given. The counsel for the prisoner endeavoured to take advantage of that distress under which the witness laboured, as if he had been prevailed upon to interfere for the purpose of taking away the life of the prisoner at the bar. The witness said that this day he felt as the most severe he had ever experienced—that his mind had been shaken for some time past, and you, gentlemen, saw the attempt which was made to represent this evidence as the effect of intimidation and power. But no such thing appeared. He was threatened with confinement; that was, for not signing his examination after he had made it. He told you, he was acquitted upon the charge of perjury. This is further supported by evidence. He declined to make any objections in point of law, and he was questioned as to the conversation with Nailor, who is not produced to contradict what the witness said. In this light, Mr. Cockayne came

forward, and though he could not take upon him to tell with what intention, Jackson came to Ireland, positively; the overt act laid with regard to Ireland, is that he came to procure an invasion. But if you believe the evidence of Cockayne, see the conduct of Jackson upon his coming here, and see from that, whether his coming was not for the purpose imputed to him. The witness tells you, that upon their first coming to Ireland, the first conversation arose upon the politics of Ireland, and the dissatisfaction of part of the people in Ireland. He said that a person of the name of Lewins solicited credentials to shew Hamilton Rowan, to give him a confidence in holding communications with the prisoner. The witness told you, that Jackson expressed his concern at having given some of the papers for this purpose, and he wished to have them back again, as he would not trust them in the hands of others, if he had them back. He told you that there was a meeting at Rowan's: he saw a relative of Rowan's there, who went away, after which Irish politics, and the United Irishmen were the subjects of conversation. I say, gentlemen, and I am sorry for it, that there is not a single overt act in support of which there is not evidence for the consideration of a jury. He said there were conversations about sending some one to France, and that Tone agreed to go at one time, but receded at another. He talked also of Dr. Reynolds, and also of the propriety and impropriety of giving them instructions; that the prisoner did not approve so much of Reynolds, as he did of Tone.

[Here Mr. Prime-Serjeant was interrupted by the prisoner's counsel, who said they had now a witness of the name of Watson to impeach the character of Cockayne.]

MR. SOLICITOR-GENERAL.—My lords, in the absence of the Attorney-General* it is my duty to resist the examination of this witness. I cannot submit to such a precedent being established, and the more so as every proceeding in this trial, and the solemnity, will form a precedent for future cases. The witness they called to the fact alleged, when they had stated their case for the prisoner, was William Humphries, who being called did not answer, and then they had just learned that he was gone to the Isle of Man. They did not call any other person—nor did they say that they had any witness of the name of Watson, which shows this attempt to be an after-thought—a thought fabricated after the counsel for the prisoner had spoken to evidence, and whilst the counsel for the crown were proceeding in reply. Whatever may be the humane disposition of the court, I trust that they will not dispense with that rule and order of proceeding which the wisdom of your venerable predecessors, the judges of England and Ireland, have made part of the law, wisely regulated for the investigation of truth, and a departure from which, under such circumstances, would lead to confusion, may be introductory of perjury, and subversive of truth.

LORD CLONMEL.—I confess I think it is extremely irregular, and I tell you why. See what Mr. Curran, who stated the case, said—“The only evidence I shall produce will be a witness to contradict

* Mr. Attorney-General had retired to take some refreshment, it being at this time near two o'clock on Friday morning

Cockayne"—that witness did not attend. However, where the life of a man is to be affected, I will go as far as I can in yielding to his desire, even against what I conceive to be the rule, particularly as my brothers are disposed to grant the indulgence.

Mr. CURRAN.—My lord, I feel that it would not be a stretch of the rule to say, "Sir, you are precluded from giving further evidence." But I proposed to call the witness from a conviction that I would not do my duty without proposing to call him when it was mentioned to me.

John Watson, sworn.—Examined by Mr. CURRAN.

Q. Do you know John Cockayne? A. I have seen Mr. Cockayne the attorney of London.

Q. Do you know him? A. I do—I see him now.

Q. Did you know him in London? A. I did, by his character, for near two years, while I was a licensed lottery man there.

Q. You knew his character? A. I have heard his character.

Q. Was it a good one or a bad one? A. I knew his character in his profession as an attorney, not his private character as a man.

Mr. Justice DOWNES.—That might go to his being a good or a bad attorney.

Q. Do you know his general character? A. I do as to his practice.

Q. Do you mean as to his morality and integrity? A. There was neither morality nor integrity in it.

Mr. Justice DOWNES.—His general character as an attorney is not the point in issue.

WITNESS.—There was nothing in his practice that had morality or integrity—it appeared from his connections—he was connected with informers.

[The Counsel for the Crown proposed to cross-examine this witness.]

Court.—We cannot permit it, because this man knowing nothing of the private character of the witness, he could not have known anything as to the material point to be enquired, whether the witness was to be believed upon his oath. What do you mean by his private character? A. His private dealing, about which I know nothing.

Q. How long have you been in this kingdom? A. Twelve months.

Q. How long since you gave any information about this matter? A. I was in court, and a gentleman here having heard me mention Cockayne's name sometime ago, called me forward, I did not know for what purpose.

The witness was ordered to retire.

Mr. PRIME-SERGEANT continued.—Gentlemen, the first overt act is, that he came to Ireland to procure information of the king's subjects. The second is, that he endeavoured to incite an invasion—but it is irresistible as to the third, if you believe that the prisoner, on the 21st of April did excite, exhort, and counsel, and as far as in him lay, did encourage Theobald Wolfe Tone to go into parts beyond seas, to France, to represent to the ruling powers there, that divers subjects of this kingdom were disaffected, &c. Gentlemen, if your notes and mine differ upon this evidence, I beseech you to pay no

attention to mine. But as I have taken it, the witness has heard alternately in conversations from Jackson, Rowan, Tone and Reynolds, that there was a scheme to send Tone or Reynolds, with a plan to Paris. That expressions of encouragements were used to Tone by the prisoner and Rowan. That the prisoner was present at some encouraging conversation by Rowan, and upon some conversations with Tone, who made objections on account of his family, and the loss that might accrue by missing opportunities in Ireland. Jackson told him, he would find the French a generous people. Was it necessary, gentleman, to have recourse to the French upon the subject of manufactures, or a law suit? No, gentleman, it was a public measure, and the reward was to be public also. It appeared, gentlemen, in evidence that Jackson came into Ireland with a fictitious name, that of Thomas Popkins, which he used in his correspondence. It will be for you to discover, and ascertain for what purpose the parties involved the matter in these obscurities. Why, in one letter the subject should be manufactures, and in the next, the subject should be law. The fourth and fifth overt acts are a conspiracy with others to procure a person to represent to the French, the dissatisfaction of part of the people, and to excite an invasion. With respect to these two overt acts, I think there is matter in the correspondence of Jackson, when particularly adverted to, for the jury, to consider whether there be proof of them or not. But, under the correction of the court, I say, that if a single overt act be proved, clearly connected with the treason with which the prisoner is charged, there is sufficient to warrant you to convict him. But I acknowledge that if on the other hand, you believe none of them are proved, the law and your conscience call upon you to acquit him. The sixth overt act is, that on the 21st of April a letter was written to William Stone to reveal his intention to send a person to France to represent the state of this country. The evidence of Cockayne was, that Tone agreed to go, and afterwards receded from that agreement. The letter was written on the 21st of April, and when he began, it was conceived that Tone was to go; and in this letter are these remarkable words; "Let them know where I am, and that I am doing everything I can to serve Mr. Nicholas, and that I am procuring a person to carry the covenants and leases;—a few days will decide whether we go or not. I have written the above during the negotiation with the person; he has this morning 24th of April, decided that his private affairs will not let him go." If, gentlemen, you believe the evidence of Cockayne—if you believe that this letter was written—if you believe that this charge in the indictment is proved, you will consider whether it is connected with either or both of the treasons with which he is indicted. "I wish you would write the first post day, and tell Mr. Nicholas that to-morrow I send two letters for him, containing opinions thoroughly considered, and well digested by counsel here." This was begun on the 21st of April, and the letter appears to be concluded on the 24th when it was put into the office on that evening, containing the paper of the State of the kingdom, as appears from the evidence of De Joncourt. The seventh overt act is grounded upon the same evidence; it is the same act laid to be by a person unknown:—if that alone had been proved, and you are of opinion that it relates to the

treason charged, it will warrant you to find him guilty. The letters were sent to the post-office by Cockayne; they were subscribed by the directions of the prisoner. They got into the hands of Jackson himself, and it was for him to account if they were put in by other means. The letter proved by Cockayne to have been in the hand-writing of Jackson, and found among the papers of Stone, requesting that the papers before left might not be made use of, shews that Jackson came to Ireland, having prefixed the correspondence with fictitious names. He forbids this afterwards. The ninth overt act is a letter written to Benjamin Beresford, requesting him "to inform certain persons," &c. "You are requested to see Madgett directly, and inform him that two letters, with the opinions of the greatest counsel," &c. That very night these two letters were intercepted in the office. On the morning of the next day Cockayne applied to Mr. Hamilton to know whether the letter &c. had been intercepted, and furnishes the original paper in the hand-writing of Jackson, from which the copy was made. Hamilton took a press copy of it, which being imperfect, it was objected to by the prisoner; the copy was written in the prisoner's presence, and by his directions sent to the post-office. The eleventh overt act is, that he sent information to France. This, gentlemen, goes as well to the papers which were forwarded as the others which have been produced in evidence. Now, gentlemen, see whether any man living, of the most scrupulous and tender conscience, can hesitate to pronounce what the object and motive of such papers were. Look at the words expressing the situation of Ireland, and inviting "an invasion in sufficient force." Here is nothing of trade or manufactures; nothing of law suits or covenants or leases. If you believe that this was written by the procurement of Jackson, to be forwarded by his procurement as Cockayne has sworn, to the French people, that generous people, who were to support the Irish nation—

MR. JACKSON.—I beg Mr. Prime-Serjeant's pardon, there is no evidence that the paper was to be forwarded.

MR. PRIME-SERJEANT.—I beseech the prisoner at the bar, if I have mistated, even to his feeling, what the case will not warrant, to apprise me of it, and I will retract it, with more satisfaction than any assertion I ever made in my life. I intended to say, that if the jury believe it was written by the procurement of the prisoner, and intended to be forwarded though intercepted, the crime in point of law is consummate.

MR. JACKSON.—The indictment states, that the letter was to be sent to Benjamin Beresford. There is no such thing upon the superscription.

MR. PRIME-SERJEANT.—The tenth overt act does not state it, but the ninth does state that the letter was to be sent to Benjamin Beresford—the letter in evidence a Monsieur Beresford. It is matter for the jury to consider whether the evidence proves the charge in the indictment. If the jury believe that this letter was in the custody of Jackson and written for the purpose imputed to him, it is a new overt act. I agree with the gentlemen concerned for the prisoner that the evidence of Cockayne, under the particular circumstances under which it comes forward, does come so infected as not to have that weight, which it would have if those circumstances did

not exist. But I say his testimony is corroborated by such a variety of circumstances as establish the truth of it. No person is brought forward to disprove the hand-writing of Jackson, as proved by Cockayne. With respect to Mr. Tone, it will be a subject for your consideration, gentlemen, whether it was competent for the gentlemen concerned for the prisoner to produce him. If he had been produced by the Crown, he might very well object and say, "I will not accuse myself." They had notice by the indictment that his testimony might be materially, and could have come prepared. If there be weight in these observations your lordships and the jury will give them a proportionate attention—if there be not, you will throw them out of your consideration.

Gentlemen, I feel a degree of satisfaction in my mind, arising from this circumstance, that I am not conscious of having made an observation which the case will not warrant. Gentlemen, if you believe the evidence, you have a duty to discharge to yourselves, your country, and your God; and if you do not believe it, your duty is to acquit the prisoner. If you have such a doubt, not such as womanish fears may suggest, but such as your sober judgment may, you will give it due consideration and lean to the side of mercy. I am sure the world will be satisfied with your verdict after you have given the case such consideration.

MR. JACKSON.—I feel a weight upon my mind to make an observation or two upon what Mr. Prime-Serjeant has said upon the superscription of the letter to Monsieur Beresford. One was directed to Basle in Switzerland, a neutral power; and another was directed to Amsterdam, which at that time was at war with France. The places to which the letters were directed, were either neutral places, or at war with France:—the letters were not sent to enemies of England. There is nothing but constructive evidence that these papers were intended for the enemies of Ireland. This, my lords, is all I have to say.

LORD CLONMEL, Chief-Justice.—Gentlemen of the jury, in this case of the King against William Jackson, clerk, the indictment against the prisoner is founded on the statute of treasons, 25 Ed. III. chap. 2. a statute that has been considered as one of the greatest protections to the subject that ever passed; as stating and precisely ascertaining what shall be treason to affect the life of the subject, to prevent any unascertained crime of that nature from affecting him. The two branches of treason comprehended in this indictment are, the compassing the death of the King, and adhering to the King's enemies. I would now mention a principle or two that have never been doubted; one is, that a conspiracy to levy war against the King or his government, is evidence of compassing the death of the King. This is mentioned in the works of all the great crown lawyers; in 4 Bl. Comm. 82. 3 Inst. 9. Foster's Cr. L. 212, 213. You will understand me when I say, that evidence of conspiracy to levy war against the King or his government, is evidence of compassing the King's death; and the reason justifies the principle; for the result of such a conspiracy is probably the King's destruction, either by his death or his imprisonment, which may lead to his death; and for that reason it is applicable as evidence of compassing the King's death. Again—

another principle is, that giving intelligence to the King's enemies is evidence of the second branch of this indictment, the adhering to the King's enemies. This is a clear and simple species of high treason ; each part of the indictment charges a clear high treason, not constructive nor involved. It has been fortunate in this country, though it may make the difficulty the greater on the judges at present, that there is scarcely an instance in the recollection of the oldest lawyer, of that crime having been committed in this kingdom, and a prosecution for it ; but a case has been determined in the Court of King's Bench in England, in the year 1758, resembling the present in many instances. The King against Dr. Hensey,* who was convicted of high treason and judgment of death pronounced on him ; in that case, Lord Mansfield, with the concurrence of his brethren followed by Foster, and as able assistants as the Chief-Justice had at any time, lays down the law thus—"Levying war, is an overt act of compassing the death of the King. An overt act of the intention of levying war or of bringing war upon the kingdom," (and those words are very material) "is settled to be an overt act of compassing the King's death. Soliciting a foreign prince even in amity with the Crown, to invade the realm is such an overt act. And so was Cardinal Pole's case. And one of these letters is such a solicitation of a foreign prince to invade the realm. Letters of advice and correspondence, and intelligence to the enemy to enable them to annoy us or defend themselves, written and sent in order to be delivered to the enemy, are, though intercepted, overt acts of both these species of treason that have been mentioned ; and this was determined by all the Judges of England in Gregg's case : where the indictment (which I have seen) is much like the present indictment. The only doubt there arose from the letters of intelligence being intercepted and never delivered ; but they held that that circumstance did not alter the case." And, gentlemen, to justify that doctrine, one obvious reason must occur to all your minds ; that no person could be indicted with effect for sending letters, if the law was that they must have gone to the place for which they were intended ; because in that case they could not possibly be laid hold of for the purposes of prosecution ; it would be grossly absurd. Another paragraph in that case I will read to you as bearing on the facts in this case. "As to the fact in the present case—the jury are to consider whether they were written by the prisoner at the bar, in order to be delivered to the enemy, and with intent to convey to the enemy such intelligence as might serve and assist them in carrying on war against this Crown, or in avoiding the destinations of our enterprizes and armaments against them." I think I have now laid down certain principles and clear positions in your minds as far as I have gone, which will go a great way in directing you in the consideration of this case ; I will now state to you how this indictment is laid, and go through the different overt acts stated to support the intention ; for that intention, if supported by the acts stated on any of them, will complete the crime against the prisoner ; any one of them, if you believe the intention, and the overt act to be proved, will complete the charge against him. I shall endeavour,

* 1 Burr, 642.

feeling great difficulty from my own inability at this late hour of the night, to collect the facts in the best order for your consideration ; it will be your verdict, and not the verdict of the Court ; we are responsible for the law, it is our duty to state the law, and I have laid down principles from great authority ; I shall only add to them, that by the common law of both countries, one witness alone is sufficient in these cases : if you believe that witness, and if he swears to the facts that are laid, and if they are sufficiently stated to be the acts of the prisoner in support of the intention charged, it is the opinion of the court, that by the common law a second is not necessary, and no statute on the subject to contradict that, exists in this country ; and here, let me say how the law appears to be in that case ; it was not only the opinion of Judge Foster, one of the most honest and greatest lawyers that England ever knew, and who ranks with Lord Hale ; but also, as appears from his Crown Law, p. 233, it was the general opinion, that at common law, one witness was sufficient in the case of treason, notwithstanding Lord Coke's opinion to the contrary : the opinion of Judge Foster is the same with Serjeant Hawkins, and though Hawkins is only a compiler, and states many doubts, yet he is certainly one of the most faithful and laborious compilers that we have. Let me now state the facts from the words of the indictment. William Jackson is charged, for that, at a time when open war existed between France and England—of which Foster says, that public notoriety is sufficient evidence—he did, knowing the premises, but contriving the tranquillity of the kingdom to disquiet, the government to subvert, and the King of and from the crown to depose and deprive, and to death and final destruction to bring and put ; did on the 3d day of April, in the 34th year of the King &c. at the parish of St. Andrew &c. traitorously compass, imagine, and intend the King, of and from the crown of Ireland, to depose and wholly deprive, and the King to kill, and bring and put to death. This is the general charge ; that he imagined and compassed the king's death, and at that time and under those circumstances ; and then in the first count, different means are stated : first, that he landed in Ireland, for the purpose of procuring information concerning the situation and disposition of the King's subjects, now as to the disposition of the King's subjects, that part of the charge will be more in your mind when you come to consider what I shall lay great stress on, the *state of the nation* that was sent over. It is next laid, that the prisoner at the bar, did consult to levy war in the kingdom of Ireland, against the King : and if it be proved to your satisfaction, that he did conspire to levy war, and to invite the French power to invade this kingdom ; it is evidence in support of this count. It is next laid, that the prisoner did incite and endeavour to persuade one Theobald Wolfe Tone, to go into foreign parts to represent to the French powers that divers subjects of Ireland were dissatisfied with the government, and to persuade them to invade Ireland ; this also will be applicable to part of that statement which I shall have occasion to dwell on hereafter. The next act laid is, that the prisoner conspired with other persons to procure and provide a person to go beyond the seas—it is to the same purpose, but more general than the former, which applied to Theobald Wolfe Tone only. Next, that he did conspire with others,

to send a person to France to give information of the state of Ireland—and this also is evidence, if proved, of compassing the King's death. It is next charged that he did compose and write, and cause to be written, a letter to William Stone in England, and did by that letter instruct him to disclose to the persons having the powers of government in France, a scheme of the prisoner's to send a person to France to satisfy said persons of divers subjects of Ireland being ready to negotiate with them, for an invasion of Ireland, but that the private affairs of such person would not permit him to go, and therefore that the prisoner would send a statement of the situation and dispositions of the people of Ireland—this is evidence also of compassing the death of the King. The next act laid is to the same effect of the last, but put more generally, and this and all that I have mentioned, go in support of the first count. The next charge is that the prisoner delivered and caused to be delivered the said letters into the post-office here; and if this be proved it falls under that head described by Lord Mansfield in Hensey's case, and that act would be sufficient to make him guilty of compassing the King's death. The two next overt acts laid are, the writing a letter to Benjamin Beresford, and the delivering that letter into the post-office. It is next laid, that the prisoner composed and wrote, and caused to be written divers instructions, inviting the King's enemies to invade Ireland—and this seems to me very material for your consideration: it is stated that among other things the following particulars are contained, "that the Dissenters are steady republicans."—(I will not repeat this paper, as you have already heard it more than once.) The next charge is, that the prisoner wrote several other accounts and instructions concerning the people of Ireland, and all these accounts caused to be delivered into the post-office. And, in the next charge, those words which I have stated are again repeated. These are the charges, all of which are applicable to the first count; and if any of them are substantially proved, and you believe it, it will lead you to find the prisoner guilty. These charges are applied to the second branch of the indictment, and support it, as well as the first, if proved. I shall now take up the evidence in the order it was laid before you, and it will be for you to see whether the intentions, the purposes and the acts proved, be the intentions, the purposes, and the acts of the prisoner Jackson. Any one of the charges, if proved, will support either branch of the indictment, and I shall make such observations as occur to me from time to time. John Cockayne was first produced—he swears that he has known the prisoner Jackson ten years; it has been said that it appeared from Cockayne that Jackson came hither to furnish some provisions for the French, and not with any treasonable design—but Cockayne's evidence was, that when he came over, he did not think Jackson would put himself into his present situation, or that he should ever be a witness against him, which he swears he is very sorry for, if you believe him. They dined, he says, at Counsellor M'Nally's; Counsellor Simon Butler dined there; the conversation turned on politics at large, those of the day, and those of the Irish nation; it went to the dissatisfaction of some part of the kingdom—now that may be material, if you believe the witness, when you come to consider the state of the nation, when the dissatisfaction of the King's

subjects is mentioned. The witness then says that he saw Mr. Lewins at Hyde's coffee-house, that he asked Jackson for some papers to deliver to Mr. Rowan, to convince him that he was a man with whom he might converse with confidence; on this part of the evidence, one observation arises; as soon as these men came into this country, if you believe Cockayne, Jackson furnishes Lewins with certain documents, in order to convince Rowan that he was a man to be confidentially spoken with—of what were they to speak? why was he to converse with Rowan, a prisoner in Newgate?—and these were such papers too, that Jackson said that if he had had them back, he would not have entrusted them to Lewins again—these papers were asked by Lewins with that view, but whether the prisoner gave them with that view, is a conclusion for you to draw; this passed a few days after Jackson's arrival here. The witness and Jackson went together to Newgate soon after—the conversation turned on Irish affairs—on the United Irishmen—on some dissatisfactions among the people in some parts of the kingdom; it does not appear that any part of that conversation was about manufactures and lawsuits, the topics alluded to in some of Jackson's letters—it was a political conversation—I am not saying that it was not possible such a thing might exist—far from it—there may have been such things as lawsuits and differences in Jackson's family, and Rowan not know a word of the matter. There was another meeting—there, Tone read a paper but the witness did not hear it; there was something about a plan to send Tone to France, and, if you believe the witness, Jackson approved of Tone for the purpose, more than of Reynolds; this supports what he said about the plan of sending a person to France: the witness said they were to go with some papers—with written instructions for the French; that he heard this alternately spoken of by Jackson, Rowan, &c. and that he understood it was to Paris that they were to be sent.

On this letter (No. 2) marked with a large cross, and contained within two covers, in each of which there was a recommendation to forward the enclosed; I will make one observation; I wish not to dictate; I wish to raise in your minds sentiments that will lead you to the truth; it was said with good sense by the prisoner at the bar, that there is no evidence that these papers were to go to the French; but see what was the recommendation in each of the covers—it was, “to forward the inclosed;” the paper was not to rest there; this is material for your consideration, that is, if you believe the paper to be the hand-writing of Jackson. Cockayne next proved his own hand-writing to the letter marked A, No. 3. That this copy was sent to the post-office by the prisoner's directions, and that Mr. Hamilton took a press copy of the original; it is directed A Monsieur Beresford, Basle, Switzerland, and dated Dublin 24th April; it will be for you to judge whether it means really and *bonâ fide* a lawsuit, or whether the language is not intended to convey other things—of what is alleged in the overt acts laid—“collecting what is now sent as a real case in point,” this is incorrectly expressed, if it is a law matter that is meant—however, the prisoner is no lawyer. “By hostile or pacific means”—that may be meant of a lawsuit; Jackson is a clergyman; he is not a lawyer. The letter is signed “Thomas Popkins,” this furnishes a circumstance for your consideration, if you believe

Cockayne ; Jackson has shewn no necessity why he should change his name in this country while conducting a lawsuit for a friend abroad : Cockayne swears that this was a copy from a paper in Jackson's hand-writing ; look at the date, it is the 24th April, and compare it with the day when the statement of the nation was put into the post-office. The next letter is No. 4, B. it is in the prisoner's hand, but the superscription is written by the witness, by the prisoner's direction ; it is for you to consider what all this mystery means ; the inside directed to one person—the outside to another——

Mr. JACKSON.—My lord, there is really no mystery in the case ; Mr. Stone had a house at Oldford, all letters to him there were directed in his own name ; all letters to him in London, were by his directions to be sent to the house of Lawrence and Co.—now, may I make one observation as to the other letter, which your lordship seems to think was something enigmatical.

Lord CLONMEL.—No ;—do not think that I say so.

Mr. JACKSON.—That letter has a postscript mentioning something about the birth of a child ; your lordship left it to the jury to enquire whether it alluded to a *bonâ fide* transaction or not : no, my Lord—that lady had been separated from her husband for several years ; she had a child during that separation, and I believe the father did not know the sex of the child ; for some reason best known to themselves, they never corresponded. As explanatory of the lawsuit—My lord, it is well known that Mr. Beresford was married to the sister of Archibald Hamilton Rowan, and conceiving himself entitled to a fortune on the death of Mrs. Hamilton, the mother of Mr. Rowan, in right of his wife, requested of me to make enquiries about it, particularly as he had written to the executors and representatives of Mrs. Hamilton, and never could obtain an answer.

Lord CLONMEL.—Gentlemen, you have heard Mr. Jackson ; I wish, if what he has said can be of any use, that there had been evidence of it. This letter will also be for your consideration, whether it be written *bonâ fide*—whether the opinions mentioned be legal opinions. No. 5, C. is enclosed within two covers directed in witness Cockayne's hand—[the Clerk of the Crown read this paper by his lordship's order.] No. 6, is a duplicate of No. 5, the witness told you it is by desire of Jackson all in his, the witness's, hand-writing. Mr. De Joncourt proved that he had orders to intercept these letters, and that he did so ; he found them on the 24th April, and gave them to Mr. Hamilton.

Cockayne was then cross-examined ; but before I come to that, I shall make one observation on his direct examination : he swears he directed these letters by Jackson's desire ; you see what they were—they were transcripts ; they corresponded with the papers found on Mr. Jackson's table in his lodgings, which was evidence of his possession ; I say, then, as to these papers, of which there appears to have been four, if you believe that two of them were sent by the direction of the prisoner at the bar—that he knew their contents, and that he sent them into foreign parts for the purposes stated in the indictment—I have no hesitation in saying (and I believe my brothers entirely agree with me,—if they do, they will say so, or qualify their opinions as they may think proper) that they are treasonable to all intents

and purposes, as tending to invite a foreign enemy into this kingdom. If you believe that to have been the intention of the prisoner at the bar, you ought to find him guilty.

Now, as to the objections arising on the cross-examination of Cockayne. He was examined as to his credit, that he was a man not to be believed upon his oath: he stated the circumstances of the indictment and prosecution for perjury: you heard the account he gave of it, and you are the proper judges of his credit.

There were two papers found in the prisoner's possession, in his chambers by Carleton, agreeing with the papers sent to the post-office by his directions. If you believe they were put into the post-office by his directions, you ought to find him guilty. It is then suggested by his counsel, that they were put into the office by Cockayne, and he knew they were to be intercepted. I gave an answer to that early:—it was not from the knowledge, or intention of Cockayne, that you are to judge, but from the knowledge or intention of Jackson himself. The question is, whether you believe that they were sent to the post-office by Jackson, with the intention I have described. But if you believe, either that Jackson did not know the contents of the letters, or that he did not send them, or that they were not directed by his advice or request—if you believe, which is within possibility, that this was all a scheme and a plan of Cockayne to bring the prisoner into this situation, then you ought to acquit him. It is possible that Cockayne might have contrived this scheme, abominable as it would be, to entrap Jackson, for some bad or wicked purpose, to take away Jackson's life, and might have written the body and superscriptions of the papers for that purpose. If you believe that, you can have no hesitation in acquitting Jackson. And if your minds are suspended in such a degree of doubt, that you cannot, balancing one supposition with another, satisfy yourself, you will according to the benignity of the law, lean in favour of life, and acquit the prisoner.

Mr. JACKSON.—My lord, will your lordship give me leave to mention another thing?

Lord CLONMEL.—Yes, go on.

Mr. JACKSON.—There is another thing within the power of possibility—that is, that supposing the fact to be as Cockayne has stated, it is within the power of possibility, that one letter, which *primâ facie* was to go to Amsterdam, then at war with France; and the other to Hamburgh, a neutral power. There is a possibility that they were not to go any farther than those places; for there is no evidence that they were to be sent to France.

Lord CLONMEL.—I thought I had stated it more favourably for you than you do for yourself. I stated, that the jury must believe, that these letters were to go further, and were to be delivered to French persons, for the purpose of exciting them to invade this kingdom.

Mr. JACKSON.—There is another circumstance I must mention. I am afraid I shall tire your lordship.

Lord CLONMEL.—No, sir, go on:—nothing can tire me upon this occasion.

Mr. JACKSON.—There is a circumstance which has been stated to

be very material ; the cross on the inside envelope of these two letters. Now, it is usual, in the greatest mercantile houses on the continent, at Hamburgh and other places, where letters are intended not to be opened by the clerks, but by the principals only, to mark them with a cross, and other symbols, to denote such intention.

Lord CLONMEL.—Of that there is no evidence. The jury will make their observation upon what you have said. The next evidence was Sackville Hamilton. (His lordship then recapitulated Mr. Hamilton's testimony, and that of the other witnesses ; on his observing on parts of the letter B, No. 1, particularly the words—"I am glad to find that the patterns I sent have reached the persons for whom they were intended. The state of manufactures in England which your friend drew out is very just.")

Mr. JACKSON.—There is not anything surprising that a person corresponding with Stone, should correspond on matters of trade and manufactures ; he is extremely eminent in that way ; in particular, he has lately constructed a very large stamp engine.

(On Lord CLONMEL's making further observation on the signature of Thomas Popkins.)

Mr. JACKSON.—I think I can easily explain that. I left England some years ago, and became involved in difficulties which were not over when I returned—I applied to Mr. Cockayne to arrange my affairs ; in the meantime, I lived in obscurity, and in order to conceal myself the more effectually, I begged that any letter to me might be directed under the name of Thomas Popkins ; but when I came to this country, not being apprehensive of any personal danger, I went by my own name ; and I was a man of as much publicity as any in town. Another thing—there is no proof that I ever was employed by France ; if I was, and if they were such a generous and brave people, as I am supposed to have represented them, they would at least have paid my debts ; yet I was under pecuniary difficulties—now, for a man to come here and attempt an invasion, and yet not have money to pay his debts, is to me as great a mystery as any that has come out in this business.

Lord CLONMEL.—I wish the jury to attend to Mr. Jackson's observations on the facts ; but they cannot attend to his assertion of facts which are not in proof. (His lordship then proceeded)—Here the prosecution was rested. Mr. Curran, who stated the prisoner's case, and observed upon the evidence, did give a promise to the court, that a witness would be examined to contradict Cockayne. No such witness is produced :—No witness was produced by the prisoner. The counsel stated their objections in point of law, and after they had gone through their observations, and the Prime-Serjeant had gone half through in reply, they offered a witness to discredit Cockayne ; and to be sure, if he were discredited, there is nothing in the case. I have no hesitation in saying, that if you do not believe him upon his oath, you ought to acquit the prisoner. But the witness produced knew nothing pertinent to the subject ; he knew nothing of his private character, or anything beyond his practice as an attorney. I would rather let any further observations come from my brethren. However there are some which strike me as necessary to be made. It was said, that the prosecutor should have produced Tone. The Prime-

Serjeant answered that—the prisoner might have produced him. The papers sent up to you go by consent. It was objected, that two witnesses were not produced to the same overt act, or one to one overt act, and a second to another. I have given you my opinion as to that. My brothers will give you theirs—I think by the common law of this kingdom, two witnesses are not necessary. The next objection was to shew that Cockayne was a person not to be believed upon his oath, and they endeavoured to blacken him by shewing what they called the baseness of his conduct, being the attorney and friend of the prisoner. To that it may be answered, I do not say it is the case, that he was more likely to know the circumstances. There does not appear to have been any grudge or quarrel between them:—but however the case depends so much upon the credit of Cockayne that unless you do believe him, you ought to acquit the prisoner. I wish not to go further into the evidence as to what Carleton said, making a second witness, being of opinion that a second witness is not necessary. You, gentlemen, will consider the whole case, both upon all the evidence which has been given and all the papers, which will be sent up to you. I do not wish to say much in the way of observation;—however it is my duty to say something as it rose upon my mind. It is somewhat remarkable that Jackson did not produce witnesses. He was arrested in April 1794. He has had the same opportunity of preparing for his defence as every other prisoner, and no person has been produced.

Mr. JACKSON.—My lord, the last time the trial was to come on, the Crown put it off on account of the absence of Cockayne. I had two witnesses then; William Humfries and George Dodwell. The former is an ensign in the city of Dublin regiment, who could have disproved the declaration of Cockayne, stated by Mr. Curran. Mr. Humfries has been in the Isle of Man. If your lordship would hear my agent, he would throw light upon the transaction.

Lord CLONMEL.—I would wish to do as much as possible for you; but I cannot strain the law. What witness would you examine?

Mr. JACKSON.—I had desired my counsel to examine my agent. I would examine my agent. I would examine him now to prove, that Cockayne said he had papers of mine in the morning of my arrest, which he denied upon the table here.

The Counsel for the Crown stated that Cockayne had left court, it being at this time past three in the morning, and could not now be confronted with any witness produced.

Lord CLONMEL.—It is irregular to examine this witness, who has been in court during the whole trial, and heard Mr. Cockayne give his testimony. If this man could have contradicted that witness he ought then to have mentioned it. However examine him.

Edward Crookshank Keane, sworn.—Examined by Mr. CURRAN.

Q. Had you any conversation with Cockayne touching any paper found upon the table in Mr. Jackson's room? A. I had; the day I was employed by Mr. Jackson Mr. Cockayne called upon me, and said it was rather lucky that the papers found in Jackson's room, were found there. He said he was the friend of Mr. Jackson, and wished to give evidence,—he dined at my house for that purpose. He said

he had these papers a long time before the arrest :—he had them till twelve o'clock the night before the arrest, and that night he put them in the room where Mr. Jackson slept. I mentioned this to the counsel, but did not wish to appear as a witness, and would not now but for the earnest desire of the prisoner.

Cross-examined by the SOLICITOR-GENERAL.

Q. You called a witness of the name of Humfries? A. I did.

Q. Did you not know, that Humfries was gone to the Isle of Man, at the time you called him? A. If you press me for my belief, I believe he was, but he was summoned; I saw him at the Quarter Assembly; he was served with the summons last Tuesday, and at that time I understood he was not gone.

Q. You heard the examination of Cockayne? A. I did.

Q. It was not till a considerable time after, that he was called upon to be examined to the fact, which you contradict? A. I recollect that very well; but it was owing to what Mr. Carleton said relative to some of the papers.

Q. Where is Theobald Wolfe Tone? A. I do not know.

Q. Do you not believe he is within reach of the process of the court? Where is he? A. I believe he is not in Dublin.

Q. Did you converse with him? A. I never saw him more than three or four times.

Q. Did you know Hamilton Rowan? A. I did.

Q. Did he not escape immediately after Mr. Jackson was arrested?

A. I do not know the exact time; I believe it was the 1st of May.

Q. Did you not hear the whole examination of Cockayne? A. Not the whole, for I was going back and forward.

Q. Did you not hear him say, that he had a letter of Jackson's in his possession? A. He did.

Q. Where is Mr. Lewins? A. I believe he is in England; he is gone there about some business of his uncle, Mr. Braughall; I believe the crown might have had his attendance and Mr. Tone's too: but I have heard there was a compromise with Mr. Tone by government that he was not to be prosecuted.

Q. From whom did you hear it? A. I am not at liberty to mention. I first heard it upon a consultation of barristers, respecting Mr. Jackson's business; but I heard it in such a manner, that I believe it.

Q. By virtue of your oath, do you believe that is the reason he is not prosecuted? A. I do believe it.

Q. When did Lewins go to England? A. Near a month ago.

Q. Is he not your apprentice? A. Yes.

Q. Did you not know from the indictment that Tone was a material witness? A. I cannot say to that.

Q. Don't you believe that there were meetings at Newgate between the prisoner, H. Rowan, Tone, and others, which have been stated by Cockayne? A. I believe they had some meetings.

Lord CLONMEL.—This is not perfectly regular. The agent is not usually received as a witness for his client in such a situation as the present prisoner, and nothing but that sort of leaning for the accused in such a situation could induce me to submit. We have been going too far.

MR. JUSTICE DOWNES.—Gentlemen of the jury—I agree with my lord on the law of this case, and after the full statement which you have heard, I shall not trouble you with any observations on the evidence.

MR. JUSTICE CHAMBERLAINE.—I am perfectly of the same opinion with my Lord Clonmel, on the law of this case; and in particular, I agree that two witnesses are not necessary to prove an overt act of high treason in Ireland—they are necessary in England by force of an act of parliament, which never was enacted in this kingdom. Cockayne is certainly the only witness to prove the most material facts in this case; but it is most essential that you shall consider whether his evidence is or is not confirmed by the papers which have been read, one of which, it is true, has been sworn by Cockayne alone to be the hand-writing of the prisoner, but two others have been sworn by another witness, Mr. Carleton, to have been found on the table of the prisoner at his bed side, at the time he was taken. If you believe that those two papers, purporting to be a statement of the affairs of this kingdom, were found in the possession of the prisoner, then you are to consider whether the fact of two precise counterparts thereof being found in the post-office (as Mr. De Joncourt has sworn) does or does not confirm what Cockayne has sworn, as to this material part of the case, viz. That those papers so found in the post-office were written by the direction of the prisoner, with a declared intention that they should be put into the post-office. But in considering the overt act in proof of which two papers so found in the post-office have been read, it is of the essence of the case that you shall be satisfied that this statement of the situation of affairs in Ireland not only was sent, or put into the post-office by the directions of Jackson, but that his intent therein was, that that statement should be delivered to the governing powers in France, as is charged by the indictment. The prisoner has observed that one copy was directed to Amsterdam, in a country then at war with France, another to Hamburgh (a neutral port,) and therefore you will consider whether those statements were intended merely as information to the persons to whom they are addressed at those places, or whether they were to go further—and in this part of the case it is fit that you should consider the paper containing the directions, sworn by Cockayne to be in the hand-writing of the prisoner, and by another witness to have been found in the possession of Stone, who is sworn to have been Jackson's correspondent. And in determining upon the intent of the prisoner in putting or causing those two statements of the affairs of Ireland to be put into the post-office (if you believe he did so), it is material to consider part of Cockayne's evidence. You will recollect the conversation of the prisoner with Mr. Hamilton Rowan and Tone at Newgate, about sending Tone with written instructions to be conveyed to Paris—what those instructions were, Cockayne could not tell, although he had seen the paper containing them. He told you that Tone at first agreed to go, but that he afterwards retracted, giving certain reasons, whereupon Cockayne told you, that the prisoner gave encouragement to Doctor Reynolds to go, but that the result was, that neither went. And you will consider whether it is or is not to be reasonably inferred that the instructions spoken of by those persons

at Newgate, were the same with those that were found (according to the evidence) in a few days after in the post-office—precise counterparts whereof, are sworn by Mr. Oliver Carleton to have been found on the prisoner's table, at the time when he was apprehended—then you will consider whether upon finding, that neither Tone, nor Reynolds would go upon this mission, the prisoner resorted to the post-office, and took that method of sending the instructions. It was remarked by the prisoner himself, that of the two places, to which the papers containing “a statement of Irish affairs,” were directed, one was at war with France, and the other a neutral port. And I agree that if you are not satisfied, that those instructions were intended to be forwarded from one of those places to those who possessed the government of France at that time, you cannot make anything of this, the most material overt act that is charged by this indictment.

At a quarter before four o'clock on Friday morning, the jury retired, and after being enclosed about half an hour, returned with a verdict of **GUILTY**.

FOREMAN.—My lord, I am directed by the jury to recommend the prisoner to mercy, from his years and situation in life.

The **COURT**.—Have you any doubts in your minds with respect to the evidence?

FOREMAN.—Not the least.

The prisoner was then remanded, and the court saying, that four days must intervene, before judgment could be pronounced, he was ordered to be brought up on Thursday, April 30th.

Thursday, April 30, 1795.

This day Mr. Jackson was brought up for judgment.

CLERK OF THE CROWN.—Gaoler, set the Rev. William Jackson to the bar.

Hold up your right hand.

Mr. Jackson accordingly held up his right hand.

Then the Clerk of the Crown proceeded to read the indictment.

Mr. M'NALLY.—My lords, Mr. Curran is not yet come, but any gentleman, as *amicus curiæ* may suggest to the court. It is so ruled. It is Mr. Curran's wish that the caption may be read, as well as the other parts of the indictment. It is Mr. Curran's wish it should be read, it is not a suggestion of mine.

Lord CLONMEL.—From the prisoner's apparent ill state of health, if any advantage is to be taken from reading the indictment, I should be glad it may be read through. But seeing his ill state of health, I would not wish to encrease his labour by waiting. But do as you please.

Mr. M'NALLY.—My lord, let the clerk of the crown read three or four lines.

COURT.—Do so.

Mr. M'NALLY.—My lords, by the statute of Geo. II. in this country, founded on the statutes of Wm. and Anne in England, regulating trials of high treason, the prisoner charged with that offence is entitled to a copy of the indictment. It has been ruled that that includes the caption, and it is also ruled, that if the prisoner does not avail himself

of the objection previous to the plea pleaded, he loses the benefit of it. Now, my lords, this gentleman was served with a copy of the indictment in the usual time, but there was no caption annexed to the copy that was served on him, but as it has not been usual in cases of felony to make up the caption till after the conviction, it is possible, that there may not be any caption in this indictment. I wish Mr. Jackson may be convinced whether there is any caption on the record or not. If there had been such, in a former stage of the prosecution, the smallest variance between that and the indictment would be a good ground of objection. It is the prisoner's wish to see that the caption is on the record.

LORD CLONMEL.—I see nothing in the objection. You should have had a copy of the whole record if you had applied before.

CLERK OF THE CROWN.—The record is not made up, and the caption not being part of the indictment, does not appear until the indictment is put upon the record.

LORD CLONMEL.—As you are circumstanced, you cannot take advantage of it.

MR. M'NALLY.—The prisoner then demands to know whether there be a caption on the record.

LORD CLONMEL.—I wish the counsel assigned Mr. Jackson would appear.

MR. M'NALLY.—I wish so too, my lord, for feeling as I do at present, I am little able to go on.

[The court waiting some time for the counsel for the crown, Mr. Curran came in, in the interval.]

LORD CLONMEL.—If there be nobody to pray judgment on this man he must be remanded.

MR. CURRAN.—My lords, I conceive that if the prisoner thinks he has reason to make any motion in arrest of judgment, that this is the time.

LORD CLONMEL.—The first step in such a business is for the Attorney or Solicitor-General, or some other of the King's servants to pray judgment on the person who is called up: that was the case of Dr. Hensey, and several other cases in the state trials.

MR. CURRAN.—I speak not of the gentlemen conducting the prosecution; I speak merely as between the prisoner, the court and the record; I only mean that whenever it shall be the pleasure of the court to go into this business, everything shall continue in the same situation; that there shall be no alteration in the record.

LORD CLONMEL.—It may be a full answer to what you say, that the court will not be ancillary to putting your client into a worse situation, whenever the matter comes on—

MR. CURRAN.—It is, my lord, a complete answer.

[Here Mr. Attorney-General came into court and apologised for his absence which was occasioned by indispensable business elsewhere.]

MR. ATTORNEY-GENERAL.—It is now my duty to call on the court to pronounce judgment on Mr. Jackson.

CLERK OF THE CROWN.—Set the Rev. William Jackson forward.

[Mr. Jackson was set forward.]

CLERK OF THE CROWN.—Hold up your right hand. [Mr. Jackson

then held up his right hand, but in a short time let it fall, being to all appearance in a very feeble state.]

[Here the indictment was read.]

CLERK OF THE CROWN.—Upon this indictment you have been arraigned, upon your arraignment have pleaded not guilty, and for trial have put yourself on God and your country, which country hath found you guilty—what have you now to say why judgment of death and execution thereon should not be awarded against you according to law?

MR. CURRAN.—I humbly move that the whole of the record on which Mr. Attorney-General has prayed judgment be read over.

LORD CLONMEL.—Mr. Attorney-General, you hear what is moved.

MR. ATTORNEY-GENERAL.—In the case of M'Dermott I recollect the same application was made, and the court held them not entitled to it.

MR. PONSONBY.—That was a case of felony; but in a case of treason I conceive we are entitled.

MR. ATTORNEY-GENERAL.—I do not see what difference that makes; the statute does not make any.

MR. PONSONBY.—We wish to have the whole, the caption as well as the indictment, read; in case of treason, the prisoner is entitled to a copy of the caption as well as of the indictment.

MR. ATTORNEY-GENERAL.—I acknowledge they had a right to have a copy of the caption and therefore they have a right to have it read.

[Clerk of the Crown read the caption.]

“Pleas before our Lord the King, at the King's courts of Trinity term in the thirty-fourth year of the reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France and Ireland King, Defender of the faith and soforth. Witness John Earl of Clonmel. H. and R. Conway. County of the city of Dublin to wit. Be it remembered, that on Friday next after the morrow of the Holy Trinity in this same term, before our Lord the King in the King's courts, upon the oath of twelve jurors honest and lawful men of the body of the county of the city of Dublin, it is presented in manner and form following, that is to say”—

MR. CURRAN.—Will you allow us to look at the record?

MR. ATTORNEY-GENERAL.—No, you have no right to it. As to the objection of having no copy of the indictment, it comes too late now, after pleading.*

(Clerk of the Crown, by desire of the prisoner's counsel, read the caption again.)

MR. CURRAN.—I am one of the counsel assigned to the prisoner: There is no doubt that the act does give him a right to have a copy of the whole indictment, served on him in due time before trial, and no doubt also, that has been considered as extending not only to what is generally called the indictment, but to the caption also, and it appears to be the constant usage to serve the parties with a copy of

* Foster's Crown Law, 230.

the caption as well as of the indictment properly so called. I need not cite any authority for this ; it is to be found in the third page of Foster.* I did understand that before I came into court the officer said there was no caption ; the fact however is, that my client has never had any copy of it.

Mr. Justice DOWNES.—You do not exactly state what the officer said ; he said the caption made no part of the indictment.

Mr. CURREN.—The fact is, that the prisoner has had no copy of it ; and of that fact, if you think it necessary, he is ready to make affidavit. I know what may be said in answer to this objection, so far as it is an objection—Foster does say, that if the prisoner pleaded without a copy of the caption he is too late afterwards to make that objection or any objection turning on a defect in the copy, for by pleading he has admitted a sufficient copy. Now, my lords, having learned that the prisoner was not served with any copy of the caption, it was supposed that there was not any, and therefore it was thought improper to say anything about the matter before ; it was conceived by the prisoner and his counsel, and rightly, that there must be such a record as on the entire of it would warrant the judgment to be pronounced by the court ; reading this caption, such as it is, is a surprise on the prisoner and his counsel ; they have therefore no opportunity of considering, on the foot of the caption as read and of which they had no copy, whether there may not arise an objection that might warrant an arrest of judgment. One objection strikes me on reading it—it does not name the jurors by whom the bill of indictment is supposed to have been found. The caption of the indictment in the case of the Rebels in 1746 does name the jury. If it should appear to the court that a man has been brought to trial and convicted where he has not in fact had the advantages which the law gives him for his information and direction, it would be for the court to consider whether by pleading over in chief, he shall be conceived to have waived those advantages altogether ; that he has waived them in part is certainly true ; he has waived them so far as regards the correctness of the copy ; but whether it would follow that his pleading over is an admission that he had a copy in fact served on him, will be for the court to consider. Your lordships were pleased to intimate some inclination to let the prisoner be remanded and brought up some other day.

Lord CLONMEL.—All the court meant to say was that they would yield to necessity.

Mr. CURREN.—I did not mean to press it unless your lordships were inclined from necessity ; but, there is one reason rather than any other, on which you might think it ought to be done ; the prisoner has been most violently indisposed all day ; he is at present in a state of body that renders any communication between him and his counsel almost impracticable ; he has every symptom of malady and disease about him, as you might have seen when he was put forward.

Mr. PONSONBY.—The names of the grand jurors ought to be set out in this and every other case of the same kind ; if the persons who found this bill were unqualified to act as grand jurors, it is no indictment. I could not have made this objection before, never having

* Ibid, p. 1, 228, 229.

seen a copy of the caption; your lordship will let us have time to consider this objection.

MR. ATTORNEY-GENERAL.—The application to your lordship is to remand the prisoner, in order that he may have an opportunity of considering the objection that is now made. I am sure, to indulge my own feelings, I should be happy to grant what he desires; but it seems to me an application very needless, and what will produce no fruit. The caption is a plain one, and he has pleaded to it as sufficient, and has been tried on it; I hope you will now put the gentlemen to argue their objections, as the rule always is to argue motions in arrest of judgment when they are made.

LORD CLONMEL.—They have stated their reason—what do you say as to the caption not having the names of the jurors?

MR. ATTORNEY-GENERAL.—I say it is not necessary, and has not been the practice; it is a record of the court which states that the jurors for our lord the King, have found a bill of indictment; when it is read, he pleads to it as a sufficient one. If the individuals of the jury furnish any objection, he should have taken advantage of it before plea pleaded—he might then have stated anything which he thought a sufficient objection to the return of the grand jury, or the circumstances affecting them—he might in other stages of the prosecution have availed himself of that objection. But though the names of the grand jurors were placed on the record, and a substantial objection to every one of them as grand jurors, and even though there were a substantial objection to the sheriff who returned the panel, after plea pleaded he could take no advantage of such objections; because at the moment he pleaded, he admitted the sufficiency of the persons who found the bill and who returned the panel; and it would be strange to admit that for error, which, if on the face of the indictment would not furnish a ground of objection, on which error could be brought or judgment be reversed; therefore it seems perfectly nugatory. You have the caption taken according to the practice of the court; but though it were not, it is not necessary it should appear on the face of the record for the reasons mentioned, and by pleading he has acknowledged it to be such as he should plead to. His having pleaded will not prevent him from having his objections to anything appearing on the indictment itself. But he admits that it is well found, and even if it had what he wants, it would furnish no ground for an arrest of judgment.

LORD CLONMEL.—My brothers wish to hear if you have any authorities to support the objection.

MR. PONSONBY.—Then you wish us to urge it this day?

LORD CLONMEL.—Yes, certainly. I believe it is lenity to the prisoner to dispose of it as soon as possible.

MR. PONSONBY.—As to the practice, I do not believe there is any practice upon the subject. I do not know that there has been a bill of indictment for high treason in this court for upwards of one hundred years past, therefore as to the practice, it would puzzle a man elder than any of the officers of the court to give any account of it. First, then it appears from Foster that the names of the grand jurors were set out in the caption. The Attorney-General has been pleased to say that by pleading we have cured this defect, if any it was.

But the first principle of the criminal law is, that a verdict cures nothing.

[Here the prisoner growing exceedingly faint, the court ordered the windows to be opened that he should have free air.]

MR. PONSONBY continued. The statute of *jeofails* does not apply. If it ever was error, it is error still. I humbly conceive, that you cannot be warranted to pronounce judgment, unless it appears that the bill of indictment was regularly taken and returned, as such bill ought to be. That the names of the jurors should be set out, is plain for two reasons, first that the prisoner might have an opportunity to object to them, as not being qualified to be grand jurors. Secondly, that he might have an opportunity of objecting to them, if they were called on the petit jury, because otherwise it is impossible for him to know who composed it, and these very persons who found the bill may be put on the petit jury. If it does not appear on the record that all things were legally done, the court cannot pronounce judgment. It is not sufficient to say that the charges are sufficiently laid in the indictment itself. It is not any answer to our objection to say that we do not object to the counts which charge the treason; but I say it is necessary that on the record itself, as it stands made up, all the circumstances should appear legally done. And if they do not appear so, the court cannot pronounce judgment. It is not merely on the indictment and verdict that the court pronounces its judgment; it is on the whole record. Suppose there appeared a plain, manifest and uncontroverted error in the caption of the indictment, could it be argued that the court would be warranted in giving judgment?

By this time the prisoner, having sunk upon his chair, appeared to be in a state of extreme debility.

LORD CLONMEL.—If the prisoner is in a state of insensibility, it is impossible that I can pronounce the judgment of the court upon him. If Foster had not mentioned a like instance (the case of an old woman brought up to the Old Bailey) humanity and common sense would require that he should be in a state of sensibility.

ATTORNEY-GENERAL.—On that ground I have no objection to his being remanded; it was on the other ground that I objected.

MR. CURRAN.—Your Lordship did the same in the case of the Walshes, father and son.

LORD CLONMEL.—I did.

[Here the Clerk of the Crown read the caption again.]

MR. PONSONBY.—It does not state that they were sworn to try and enquire.

MR. JUSTICE DOWNES.—It is, on their oaths.

Here the prisoner becoming insensible, Doctor Thomas Waite, who was present in court, was desired to go into the dock to him. He after some examination informed the court there was every apprehension he would go off immediately.

MR. THOMAS KINSLEY, who was in the jury-box, said, he would go down to him; he accordingly went into the dock, and in a short time informed the court, that the prisoner was certainly dying.

The court ordered Mr. Kinsley to be sworn.

He was sworn accordingly.

Lord CLONMEL.—Are you in any profession?

Mr. KINSLEY.—I am an apothecary and druggist.

Lord CLONMEL.—Can you say you understand your profession sufficiently, so as to speak of the state of the prisoner?

Mr. KINSLEY.—I can. I think him verging to eternity; he has every symptom of death about him.

Lord CLONMEL.—Do you conceive him insensible, or in that state, as to be able to hear the judgment, or what may be said for or against him.

Mr. KINSLEY.—Quite the contrary. I do not think he can hear his judgment.

Lord CLONMEL.—Then he must be taken away. Take care in sending him away, that you do not any mischief. Let him be remanded until farther orders, and I believe it much for his advantage, as for all of yours, to adjourn.

The sheriff informed the court that the prisoner was dead.

Lord CLONMEL.—Let an inquisition, and a respectable one, be held on the body. You should carefully enquire when and by what means he died.

The court then adjourned, and the body of the deceased remained in the dock, without being moved from the position in which he had died, until nine o'clock of the following morning, May 1st, when an inquisition was held upon a view of the body. Surgeons Hume and Adrian were examined; they opened the body and found near a pint of acrid matter in the stomach, which was entirely corroded; but the bowels were not at all affected, the matter not having passed to them. Mr. Hume was of opinion, the matter in the stomach was a metallic poison, that it caused the death of the deceased, and that no diet could have occasioned such appearances as the stomach exhibited; it was impossible the deceased could survive, the matter being of such a mortal nature, as appeared from the symptoms.

Mr. GREGG, the gaoler, was also examined; he said the deceased was visited by Mrs. Jackson, in the morning, before he was brought up to the court—witness went into the room, and perceived Mr. Jackson much agitated;—he said he had taken some tea which always disagreed with him, when his spirits were depressed; immediately after which he vomited very violently.

INQUISITION AND VERDICT.

County of Dublin, } AN INQUISITION indented taken and held for
to wit. } our Sovereign Lord the King at the place
 commonly called or known by the name of the Court of King's Bench,
 in the said county of Dublin, the first day of May, in the Thirty-fifth
 Year of the Reign of our Sovereign Lord George the Third, by the
 Grace of God, of Great Britain, France and Ireland, King Defender
 of the Faith and soforth, before George Hepenstal, Esq. one of the
 Coroners of our said Lord the King, for the said county, on view
 of the body of the Rev. William Jackson, then and there lying
 dead, upon the oath of John King, William Gibton, John Brooke,
 Christopher Halligan, Thomas Saunders, John Plunket, Francis

Hammil, Thomas Mangan, John Ellery, James Byefield, John Keane, and James Murphy, good and lawful men, of the said county, duly chosen, and who being then and there duly sworn and charged to enquire, for our said Lord the King, when how and by what means the said William Jackson came to his death, do, upon their oaths, say,

We find that the deceased William Jackson died on the 30th of April, in consequence of some acrid and mortal matter taken into his stomach, but how or by whom administered is to the Jury unknown.

A paper, of which the following is a copy, was found in the pocket of the deceased, in his own hand-writing.

Turn Thee unto me, and have mercy upon me ; for I am desolate and afflicted !

The troubles of my heart are enlarged, O bring Thou me out of my distresses !

Look upon mine affliction and my pain ; and forgive all my sins !

Consider mine enemies for they are many ; and they hate me with a cruel violence !

O keep my Soul, and deliver me. Let me not be ashamed, for I put my trust in Thee.

THE DEFENDERS.

THE following Trials deserve particular notice, perhaps not more from the peculiar popular organization they develope, than from the extraordinary displays of judicial character by which they were enlivened.

The Defenders, at the period of these trials, and most probably from the year 1790, had merged the agrarian, in the political nature of their Association. They were not, in the beginning, however, either political or aggressive; they were a lawless body, resisting a body still more lawless; their crimes were the offspring of a system of oppression pursued untiringly against them by the Peep-of-day Boys of Ulster.

The various other commotions, which for years had disturbed this country, destroyed its peace, injured its trade and manufacture, and peopled its jails and gibbets, had causes peculiar to themselves. The Whiteboys, who commenced their career of crime in 1759, grew out of the adoption, by the landed proprietors and farmers in the south of Ireland, of a system of extensive pasture-farming, followed by the expulsion of the tenants, who had lived by the labour of agriculture, from their small holdings. It was the same system of improvement, which is now popularly known as "extermination," and produced lamentable, but not surprising effects. "The cottiers" said the Right Hon. Charles Grant, in his speech, April 22, 1822, "being tenants-at-will, were everywhere dispossessed of their scanty holdings, and large tracts of grazing-land were set to the wealthy monopolisers, who, by feeding cattle, required few hands and paid higher rents. Pressed by need, most of these unfortunate peasants sought refuge in the neighbouring towns for the sake of begging that bread which they could no longer earn; and the only piteous resource of the affluent was to ship off as many as would emigrate, to seek maintenance or death in a foreign clime."* This was a fertile nursery of crime; and accordingly the authors of the Whiteboy disturbances were found abundantly amongst all classes and all persuasions of the peasantry. It was a society making rude attempts to resist, or avenge want; but utterly free from disaffection to the government.

* Butler Bryan's Practical View of Ireland, 10.

Similar causes, the pressure of grand jury cess and of tithes, and the demand of high prices for the setting of lands, produced in succession the Hearts of Oak, the Hearts of Steel, and the Right Boys. Lord Clare accounted for these unfortunate combinations. He said, "It was impossible for human wretchedness to exceed that of the miserable peasantry in Munster; he knew that the unhappy tenantry were ground to powder by relentless landlords."

But the Peep-of-day Boys, were an association of a different character, influenced at one and the same time by bigotry and avarice. Intolerant of the religion of the Roman Catholics, and desirous to possess their land, the Peep-of-day Boys combined the gratification of both passions, by the adoption of a system of outrage and robbery against the persons and the property of the Catholic peasantry of the north of Ireland. They were chiefly, if not entirely, Protestants, who assumed the sanctions of Protestantism for conduct abhorrent from the spirit of all religion. Originally, they were confined to the county of Armagh. Their career commenced in 1784, and has been variously described. They drew upon the stores of history, and found a precedent in the Puritan regicide's edict, "to hell or to Connaught," and they proceeded very systematically to drive the Catholic population of Ulster beyond the Shannon. At the earliest dawn, they visited their houses under the pretence of seeking for arms—the common trick of the tyrant in Ireland is a search for arms—and, even in the guarded language of the advocate of flagellation and pitchcaps, "committed the most wanton outrages, insulting their persons and breaking their furniture."* But domiciliary visits soon gave way to ejection. Expulsion from farms became general; it was a proceeding by which the Protestant wrecker, Peep-of-day Boy, and eventually purple Orangeman *specially occupied* the relinquished acres, and sat down, a conqueror, to enjoy the fruits of his invasion. The facts are undeniable; at a period little later than these trials, not less than 7,000 Catholics had been burned out of Armagh. Plowden adds, that the "ferocious banditti who had expelled them had been encouraged, connived at, and protected by government." It is certain the magistrates had been supine, and had given passive encouragement to the Peep-of-day Boys, who had changed their name into Orangemen. The charitable and christian portion of the northern Protestants looked with horror and disgust at the enormities practised upon the wretched peasantry, and falsely said to be practised under the sanctions of Protestantism; but men of that class were not the majority, nor were they found in any great

numbers amongst those to whom was consigned the guardianship of the peace. The magistrates—whether from secret sympathy, or want of energy, it matters little—allowed the houses of the people to be burned or unroofed, and the people themselves to be driven, under fierce threats, out of their native dwellings, without any active interposition to save them.

The consequence was natural. The unprotected people sought protection from themselves. They felt that they were the victims of a conspiracy between Guilt and Power—burnt out of their houses, shot, or robbed by the first; unprotected, unredressed by the last—and they looked to their own strength and despair for that defence which the law refused. And hence came the *Defenders*. Their oppressors were men of the lowest rank amongst the Protestants; the Defenders were in the lowest rank of the Catholics; but the crimes of neither can, with justice, be imputed to the spirit of their religion. The Peep-of-day Boys were vulgar men, using the name of religion, as a mask for robbery and aggrandizement; the Defenders were a society of affrighted peasants, agitated by despair or vindictiveness, and driven to wage a defensive war against violence and robbery.

A new element was introduced into the crime and misery of the northern counties. The magistrates, supine before, now became fiercely active. The cruelties of the Peep-of-day Boys were all in the right quarter: they had depopulated the villages of the poor, unroofed their houses, and brought dismay and sorrow to their hearths; it was no more than the rich man had done before—but, when misery armed, and retributive crime stalked about, when the magistrate's own house was fired, and he was individually in danger, it became necessary to cast aside supineness and to wake the most active energies of the law. And accordingly we find that in February 1796 an Indemnity Bill was required "for those persons who nobly dared to preserve the tranquillity of the country, and who in quelling tumults and insurrections had exceeded the ordinary forms of the law."

Coupled with this bill of indemnity—passed to shelter the magistrates, who had sent the peasantry, in hundreds, on board transports, without trial, or form of law—was introduced an Insurrection Act for "the purpose of preventing insurrections, tumults, and riots by persons styling themselves Defenders, and other disorderly persons." Not a word of specification beyond the Defenders—and yet it was well known to the men who introduced that bill, that the association of Defenderism—monstrous and portentous as it undeniably was—was but the antagonist power to a more monstrous system, one which had desolated several counties in Ireland, and introduced the worst

disorders by which the state could be endangered. Not one word was said of that system : not an allusion was made to the Peep-of-day Boys who flushed with the victory of the Diamond had assumed the more respectable name of Orangemen. It was a specimen of one-sided legislation—too frequent in Ireland—whose fruits are abundant in her history. The Defenders participated with the Orangemen in the practices which disturbed the public peace ; but they alone reaped the fruit of crime. One class of criminals was disposed of in the transport ship, on the gallows, or by the military ; the other was openly sanctioned or coldly censured, by the faint or feigned disapprobation of secret sympathy.

And yet there were abundant materials for even-handed justice to work upon ; there seldom occurred anything more criminal, more detestable, and more inhuman than the northern persecution. A bold and honest government could have done infinite good by a just distribution of the penalties of the law,—if whilst they hunted down the oppressed and plundered Defender, they had not spared his plunderer and oppressor. The Report of the Secret Committee mentions these things in a mitigated shape, reserving its censure for the Defenders, and but slightly alluding to the provoking cause of their crimes.

“In the summer of 1796, the outrages committed by a banditti, calling themselves Defenders, in the counties of Roscommon, Leitrim, Longford, Meath, Westmeath, and Kildare, together with a religious feud prevailing in the county of Armagh, induced the legislature to pass a temporary Act of Parliament, generally called the Insurrection Act, by which the Lord Lieutenant and Council were enabled, upon the requisition of seven magistrates of any county assembled at a sessions of the peace, to proclaim the whole or any part thereof to be in a state of disturbance ; within which limits this law, giving increased powers to the magistracy, was to have effect.”*

The religious feud, thus slightly mentioned, was the cause of the outrages of the banditti, whose ruined hearts and homes were their only cause of warfare, and whose rude organization was supplied by their despair.

When this persecution had proceeded to a great length, and the revengeful fury of the people had worked great crimes, the magistrates of Armagh were compelled to take notice of the existence of the agrarian warfare which was desolating the country. A meeting of their body took place on the 25th December 1795, having been convened by Lord Gosford for the purpose of adopting measures, “the

most likely to check the enormities which had brought disgrace upon the county and which would soon reduce it to the deepest distress.”* This meeting was only valuable for Lord Gosford’s speech—a speech of historical import, containing his undoubted testimony to the alarming state to which the country had been reduced, by a band of plebeian marauders, unchecked in their excesses by the magistracy of the country.

“It is,” said he, “no secret that a persecution, accompanied with all the circumstances of ferocious cruelty, which have in all ages distinguished that calamity, is now raging in this county. Neither age, nor sex, nor even acknowledged innocence, as to any guilt in the late disturbances is sufficient to excite mercy or afford protection. The only crime, which the wretched objects of this ruthless persecution, are charged with, is a crime indeed of easy proof: it is simply a profession of the Roman Catholic faith, or an intimate connection with a person professing that faith. A lawless banditti have constituted themselves judges of this new species of delinquency, and the sentence they have denounced is equally concise and terrible! It is nothing less than a confiscation of all property, and an immediate banishment. It would be extremely painful, and surely unnecessary to detail the horrors that attend the execution of so rude and tremendous a proscription. A proscription, that certainly exceeds in the comparative number of those it consigns to ruin and misery, every example that ancient and modern history can supply; for where have we heard, or in what story of human cruelties have we read of more than half the inhabitants of a populous country deprived, at one blow, of the means as well as of the fruits of their industry, and driven, in the midst of an inclement season, to seek a shelter for themselves and their helpless families, where chance may guide them. This is no exaggerated picture of the horrid scenes now acting in this country. Yet surely it is sufficient to awaken sentiments of indignation and compassion in the coldest bosoms. These horrors are now acting with impunity. The spirit of impartial justice—without which, law is nothing better than an instrument of tyranny—has for a time disappeared in the country, and the supineness of Armagh is become a common topic of conversation in every corner of the kingdom.”†

When such horrors—so vividly painted and by so unquestionable a hand—were permitted to be acted with impunity, there is no matter of surprise in the fact that even this eloquent denunciation was

* Plowden.

† Plowden’s History of Ireland from 1801 to 1810, introduction, p. 33.

unproductive of any good effect. The spirit of impartial justice did not sleep—it was dead. For the legislature of the country was equally supine in applying punishment where it was merited, and equally active in oppressing and torturing the already grievously-tormented victims of this “rude and tremendous proscription.” In the House of Commons, Grattan was, as might be expected, more eloquent in his details, and more indignant in his invective. In replying to the Attorney-General (Arthur Wolfe) who introduced the Insurrection Bill, Feb. 1796, he said:—

“He did not suppose the right honorable gentleman’s statement to be inflamed but, he must observe, at the same time, that it was partial. He did indeed expatiate very fully and justly on the offences of the Defenders; but with respect to another description of insurgents, whose barbarities had excited general abhorrence, he had observed a complete silence; he had proceeded to enumerate the counties that were afflicted by disturbances and he had omitted Armagh. He had received the most dreadful accounts; *that their object was the extermination of all the Catholics of that county.* It was a persecution conceived in the bitterness of bigotry, carried on with the most ferocious barbarity, by a banditti, who being of the religion of the state, had committed with the greater audacity and confidence, the most horrid murders, and had proceeded from robbery and massacre to extermination; they had repealed by their own authority, all the laws lately passed in favour of the Catholics, had established in the place of those laws the inquisition of a mob, resembling Lord George Gordon’s fanatics, equalling them in outrage, and surpassing them far in perseverance and success.”

He then proceeds to describe in detail the circumstances of this unparalleled and extraordinary phenomenon in history. The masters of families were compelled to dismiss their Catholic servants; the landlord to eject his Catholic tenants; Catholic weavers were seized as deserters, transmitted to Dublin to abide their trial for leaving a service they had never entered.

“Those insurgents, who called themselves Orange Boys, or Protestant Boys—that is, a banditti of murderers, committing massacre in the name of God, and exercising despotic power in the name of liberty; those insurgents have organized their rebellion, and have formed themselves into a committee, who sit and try the Catholic weavers and inhabitants when apprehended, falsely and illegally, as deserters; this rebellious committee, they call the committee of elders, who, when the unfortunate Catholic is torn from his family and his loom, and brought before them, sit in judgment upon his case; if he gives them liquor or money, they sometimes discharge him; otherwise

they send him to a recruiting officer as a deserter. They had very generally given the Catholics notice to quit their farms and dwellings, which notice is plastered on their houses, and conceived in these short but pithy words, "Go to hell, Connaught will not receive you; fire and faggot! Will Thresham and John Thrustout." They followed these notices by a faithful and punctual execution of the horrid threat, soon after visited the house, robbed the family, and destroyed what they did not take; and finally, completed the atrocious persecutions, by forcing the unfortunate inhabitants to leave their land, their dwellings, and their trade, and travel with their miserable families, and with whatever each miserable family could save from the wreck of their houses and tenements, and take refuge in villages as fortifications against invaders. In many instances this banditti of persecution threw down the houses of the tenantry, or what they called racked the house, so that the family must fly or be buried in the grave of their own cabin. The extent of the murders that have been committed by this atrocious and rebellious banditti, I have heard; but have not heard them so ascertained as to state them to the house; but from all the enquiries I could make, I collect that the Catholic inhabitants of Armagh, have been actually *put out of the protection of the law*; that the magistrates have been supine or partial, and that this horrid banditti has met with complete success and from the magistracy with very little discouragement.*

This was the provocation, and these the injuries by which the Catholics of Ulster were driven into the ranks of Defenderism. Men, however rude they may be, will often reason well upon familiar facts. The Catholic, who saw his cabin in flames, and his wife and children ruthlessly expelled from the scenes of his and their oldest attachments; and who moreover saw the magistracy in the country—the men of birth, intelligence and wealth—the men in whom the law is most familiarly recognized—not anxious to anticipate or quick to punish the mean and heartless agents of his wrongs, but their patrons and sometimes their instigators, it is not at all surprising he transferred his resentments from the plebeian mob who yelled around the ruins of his dwelling, to the law which seemed to sanction their crimes. And thus the Defenders were by degrees transformed into a political society, whose object was not alone to resist actual wrongs—but to destroy, or remove, their real or imagined sources.

They saw but two parties in the country, an oppressive, harsh, and bad government on the one hand; and on the other, the Society of United Irishmen bound together by a common tie of social love, and

* Grattan's speeches, vol. 3, p. 220.

professing to link all classes of their countrymen in one common resistance to all manner of injustice and oppression. Tortured, transported or hanged by the first—sued, consoled and admonished by the latter, it was natural for the Defenders to be eventually found filling the lowest ranks of the Union. The reader will therefore find them swearing allegiance to the Convention, and in their catechisms,* he will detect the French notions of universal conquest over all tyrants and kings.

“To the Armagh persecution, is the union of Irishmen most exceedingly indebted. The persons and properties of the wretched Catholics of that county were exposed to the merciless attacks of an Orange faction which was certainly in many instances uncontrouled by the justices of peace, and claimed to be *in all supported by government*. When these men found that illegal acts of magistrates were indemnified by occasional statutes, and the courts of justice shut against them by parliamentary barriers, they began to think they had no refuge but in joining the Union. Their dispositions so to do, were much increased by finding the Presbyterians of Belfast especially, step forward to espouse their cause and succour their distress. We shall here remark, once for all, what we most solemnly aver, that wherever the Orange system was introduced, particularly in Catholic counties, it was uniformly observed that the numbers of United Irishmen increased most astonishingly. The alarm which an Orange lodge excited amongst the Catholics made them look for refuge from a junction in the United system; and as their number was greater than that of bigoted Protestants, our harvest was tenfold. At the same time that we mention this circumstance we must confess and most deeply regret that it excited a mutual acrimony and vindictive spirit, which was peculiarly opposite to the interest, and abhorrent to the feelings of the United Irishmen, and has lately manifested itself we hear in outrage of much horror.†”

It was supposed by some, and falsely represented by others, that Defenderism was the origin of the second organization of the United Irishmen. The connection between these two bodies of discontent and conspiracy was attributable on the one hand to the causes I have already stated—namely, the desire naturally felt by the Defenders to enlist under the guidance of men of superior rank and ability whose doctrines of brotherly affection and political equality so admirably contrasted with the harsh and repulsive conduct of government and the gross inhumanity of the Orangemen; and on the other to the

* See the indictment in Weldon's case, *post*.

† Pieces of Irish History, written August 4th, 1793.

active propagandism of the working men of the Union who spared no opportunities to extend the organization and numbers of the society. So far was the latter feeling carried, that they imagined it possible to reconcile the two factions—the Peep-of-day Boys and Defenders—in one common political object. There is no evidence that with regard to the former, any conversions were effected. Their atrocities were too remunerative, and the rich rewards of depopulated holdings, were not sacrificed to any political chimera or unsubstantial dream of patriotism.

But with the Defenders, the United Irishmen were most successful. Neilson, Tone and some others in July and August, 1792, exerted themselves to reconcile the Catholics and Presbyterians in the Barony of Rathfryland, and Neilson travelled through the northern counties for the same purpose. Charles Teeling, some few days before the battle of the Diamond, proceeded to Armagh as he himself says “to open some channel if possible for a pacific arrangement and to preserve the county from a wanton expenditure of blood.”* Henry Joy M’Cracken, one of the victims of court martial in ’98 was also actively engaged in the same service. These men had little success in their attempts at reconciliation, but they were more fortunate in diverting the efforts of the Defenders to a change in the government of the country. That body thus presents itself under three successive aspects, an agrarian defensive society,—an ignorant insurrectionary mob—and finally a portion of that great national confederation by which the supremacy of England was nearly overthrown.

An idea has been entertained that Jacobite opinions prevailed amongst the Defenders, and that they had communications with France before those of the Union. It seems improbable; and Mr. Teeling believes that they had no French views whatever. With reference to any mission to France, it is in every way unlikely if not impossible. Until their junction with the Union, they had, with few exceptions, no man of sufficient intelligence amongst them, to devise and execute so intricate and difficult a project as that of intriguing with the authorities of a foreign state; nor is it at all likely that so accurate a knowledge of the state of Ireland existed in France as to lead the ruling powers there to open a communication with so insignificant a body as the Defenders originally were. Dr. Madden says, “it is difficult to understand the allusions to French subjects, in their test and secret pass-words and cabalistic jargon, without supposing that some slight tincture of the old Jacobite principles of 1689 was

* Teeling’s Observations on the consequences of the battle of the Diamond; Dr. Madden’s History of the United Irishmen, 1st vol., 2d series, 98.

still mixed up with their views and projects." If so, it must have been a very indefinite tincture indeed—some dim and ignorant tradition—some obscure memory of the mistaken loyalty and the unrepaid heroism of former days. And as far as their cabalistic jargon is concerned, the vulgar imitativeness of ignorance most naturally adopted it from the foolish and unnatural cant of fraternity which was used by some, even of the ablest, of the popular men of the day. A body of oppressed and plundered peasants had work more congenial on hands—that of self-defence or vengeance—than any plotting in connection with a miserable defunct dynasty. The United Irishmen had too much trouble in giving a political character to Defenderism, to allow us to suppose that of its own accord it cherished any hope of being able to assist in replacing the descendant of the miserable James—if such a descendant existed—on the throne of England. They were not Republicans certainly—the genius of their religion and their long habits of endurance forbade it—but they were too ignorant to understand the question of disputed succession, and the question itself was utterly removed from their sympathies and their sufferings. It is equally erroneous with that more modern notion that the people of Ireland expect to re-establish the titles which the prescription of centuries and half-a-dozen confiscations have destroyed.

The vengeance of government was directed with peculiar bitterness against the Defenders; and, unfortunately for them, their steps were tracked by the same low and cunning treachery which destroyed the United Irishmen and saved English power in Ireland. The infamy of Reynolds, and the appalling turpitude of Armstrong had their counterpart in the vulgar villainy of Lawler.* After the battle of the Diamond, the magistrates and military tribunals were active, to an extraordinary degree, against the unsuccessful people. Thirteen hundred of them were taken from the jails by Lord Carhampton and sent on board the transport vessels without any form of trial or legal process.† Nor were the commissions of Oyer and Terminer—though somewhat more formal—a whit less certain in distributing vengeance amongst their victims. The convictions in the following cases were not such as should be desired, or would be accepted by any but a government of hardened despotism.

In most of the cases, the prisoners were but boys;—either seduced into the foolish conspiracy by shrewder and wickeder men, or else entering upon it from the uncalculating thoughtlessness of youth, as upon something whose mystery had the delightful charm of exciting danger, to recommend it to the adoption of possibly uncorrupted hearts and

* See the Trials of Weldon and Leary. *Post.*

† Dr. Madden's History. 1 vol. 1 series, p. 132.

giddy heads. When the mere boyhood of the prisoner Kennedy was pressed upon the court, Lord Clonmel took refuge in a stale precedent from Foster in which a lad was found guilty of a very atrocious murder *and not executed*. Lord Clonmel was, to be sure, a vulgar bigot and a furious partizan. His allusion to Rowan*—a man altogether superior to the upstart plebeian, the descendant of a Williamite soldier, who owed his elevation to the bench, to the same qualities which enabled him to disgrace it—was brutal in the extreme. And we have no just reason to be surprised at the inhumanity with which—true to the instincts of his base nature—he hunted these “tuckered traitors” to the gallows.

When all the sacrifices were complete, and the convenient juries of those days, packed as they were with a skill worthy of the imitation of the corruption of modern times, had found their courtly verdicts, Lord Clonmel the presiding priest, stepped out of his office, and not content with the bloody consummation he had assisted at, indulged the grand jury with a harangue, which the reader will see at the end of the trials of the Defenders, and which he will find but little difficulty in pronouncing one of the most disgusting speeches ever uttered from the Bench of Justice—even by the accursed lips of Jefferies or of Toler—a monstrous and incredible example of judicial savagery and falsehood. The unhappy Jackson had but shortly before perished in the very shambles of justice—anticipating the public butcher, and baulking hungry vengeance—and this inhuman judge, not sparing even the dead, commenced his extra-judicial harangue by designating him as a “self-executed traitor”—contrary to the finding of the inquest which sat upon the unhappy being, and which with pious reverence to an oath, refused to load his memory with the charge of self-murder, but left the whole matter in a state of charitable doubtfulness.

The chief—nay, the only witness in the trials of the Defenders—was William Lawler. He presented one other of the phases in which the habitual treachery of those days manifested itself. With some, as with that vile miscreant Cockayne, it was affected loyalty—with others, as with Reynolds it was love of money—with others, as with the abominable Armstrong, it was inherent depravity, irreclaimable vileness, natural turpitude of heart—with others, as with O'Brien, it was a mixture of bloodthirstiness and avarice—and, it is difficult to say, what was the peculiar moving impulse of Lawler's treachery. He stood confessed a ruffian who had dared to question the truth of our divine faith—a low sceptic whose vulgar daring presumed to

* See the Speeches of the Grand Jury at the end of the Defenders' Trials.

dabble with the great mysteries of Christianity—a miserable wretch who accepted comfort from the appalling doctrine of eternal annihilation. He had attempted murder—he had plotted, devised, concocted the assassination of his brother in iniquity, Cockayne—he was a thief—he had consented to the murder of the Protestants, and his fastidiousness only refused to consent to the murder of *all* the Protestants! He was himself a Protestant—yet passed himself off amongst the Defenders as a Catholic, and embraced their tenets and their designs with equal promptitude—and yet what does Lord Clonmel say of this man? It is worth remarking—for wonderful was the chain of sympathy which extended from the witness-table whereon the corrupt perjurer was appealing to a Creator he did not believe in, to the bench on which the judge was outraging His most beautiful precepts. “My God, is it necessary for me to go into a laboured refinement to satisfy you that every thing Lawler has been saying hitherto is worthy of credit? It was alleged that the verdicts were founded upon the extravagant assertions of a wretch who should not be believed. If there be any man who thinks that way, I desire no longer to discourse with him upon any subject.”* He wished to hold discourse with no man, who would not accept the plighted oath of an intended murderer, and a professed Atheist! And this was uttered, but a few minutes after he had sent two boys, two tuckered traitors, to the gallows upon the unsupported testimony and the “extravagant assertions” of this “wretch!”

But a still more extraordinary exhibition was made by Lord Clonmel in this unusual address to the Grand Jury. Speaking of one of the Mount Norres family who had distinguished himself against a band of robbers that had infested the country, the Chief Justice said—“With one sword he subdued seven and brought them to the gallows. *I saw the man's picture with blood upon his face : glorious picture ! and glorious story to be told !*” There was one man in that court, whose picture has been drawn in our legal history, and with blood enough upon *his* face—the humanity of those who see it, will possibly not pronounce it a very glorious one.

Having said so much on the Trials, little remains to be added. With the Rebellion of '98, the Defenders substantially ceased to be heard of: the spirit that animated them was one dependant on the aggression of others, and may be discovered long after the society was forgotten. It is to be hoped that the enlightened nationality of feeling—superior at the same time to the heartless avarice and ruthless bigotry of the Orangemen, and the savage vindictiveness and low

* Lord Clonmel's speech.

intolerance of the Defender—daily gaining ground, and quietly winning its useful way amongst the young men of Ireland, will consign to utter oblivion the feuds and follies of our ancestors of every rank, and every creed.

NOTE.—The following passage is from Seward's *Collectanea Politica*, 3d volume, page 153.

“The cause of the animosity which subsisted between the Peep-of-day Boys and the Defenders has been differently accounted for. The writer of a pamphlet under the name of *Veridicus*,* attributes it to a quarrel which took place in the fair of Portnorris, between two of those sectaries, whose personal enmity soon extended itself to the entire body of each. The Roman Catholics (said he) assumed the name of Defenders, because they could not obtain protection from the laws, to which they had recourse after having been worsted by the Peep-of-day Boys. When their passions became inflamed, they proceeded to exercise the most desperate outrage against each other, in the course of which many lives were lost.”

This supposition is very absurd, and manifestly false, as might be expected coming from Sir R. Musgrave, even in the character of *Veridicus*. Another version of this contest about which I have briefly treated in this notice of the Defenders is given in *Hayes' History of the Rebellion*.

“In the beginning of the year 1795, parties of contending rioters denominated Peep-of-day Boys and Defenders, disturbed different parts of the province of Ulster, by acts of violence and outrage against each other. Some say their animosities originated from electioneering. To these succeeded, in the summer of the same year, a description of public disturbers—calling themselves Orangemen—who now made their first appearance in the county of Armagh. Their object appears to have been not to suffer a Catholic to remain within the limits of their sphere of action. They posted up on the doors of the Catholics, peremptory notices of departure, specifying the precise time—a week at the farthest—pretty nearly in the following words: ‘To hell or to Connaught with you, you bloody Papists, or if you are not gone by [*mentioning the day*] we will come and destroy yourselves and your properties. We hate all Papists here.’”

Sir R. Musgrave thus accounts for the origin of the Orangemen:—

“As the Defenders not only became terrific to individuals in most parts of the kingdom, by the constant perpetration of nocturnal robberies and assassination, but as they formed a systematic combi-

* Sir R. Musgrave—*Veridicus* was a singular name for him to choose.

nation, and supplied themselves with arms for the obvious purpose of subverting the constitution in church and state, and as they were encouraged and directed by the Catholic committee* and the United Irishmen—the Protestants of the Established Church, to defeat their malignant designs, found it necessary to excite a spirit of loyalty, which began to languish and decline in a very alarming degree, and to rally round the Altar and the Throne, which were in imminent danger. The battle of the Diamond, in the county of Armagh, in September, 1795, and the duplicity and treachery of the Romanists on that occasion, convinced the Protestants that they would become an easy prey to their enemies, from the paucity of their numbers, unless they associated for their defence, particularly as the fanatical vengeance which they displayed on that and other occasions convinced the members of the Established Church that they meditated nothing less than their total extirpation. In commemoration of that victory the first Orange Lodge was formed in the county of Armagh, on the 21st September, 1795, though the name of Orangeman existed some time before. They were merely a society of loyal Protestants, associated and bound together solely for the purpose of maintaining and defending the constitution in church and state, as established by the Prince of Orange, at the glorious Revolution, which they regarded as a solemn and sacred duty."

The last passage must be read in connection with Lord Gosford's statement, and Grattan's speeches on the same subject. A little examination will show it to be full of most gross falsehood.

* This is not worth refutation. It is a feeble falsehood.

TRIAL
 OF
JAMES WELDON,
 FOR
HIGH TREASON,
 BEFORE THE COURT HOLDEN UNDER A COMMISSION
 OF OYER AND TERMINER AND GENERAL
 GAOL DELIVERY,
 IN AND FOR
 THE COUNTY OF THE CITY OF DUBLIN,
 IN IRELAND,
 ON MONDAY, DEC. 21, AND TUESDAY, DEC. 22,
 36 GEO. III. A.D. 1795.

COMMISSION.

MONDAY, December 14, 1795.

Mr. BARON GEORGE sat as the Judge of the Commission, and was assisted by Mr. Justice CHAMBERLAIN and Mr. Justice FINUCANE.

In the latter end of the month of August 1795, several persons were taken into custody in the city of Dublin upon charges of High Treason, and in the ensuing commission of Oyer and Terminer held in October, bills of indictment were preferred against them, and others not then in custody, which were returned by the grand jury to be true bills.

The prisoners in custody were then brought to the bar of the court for the purpose of having counsel and agents assigned. They were severally called upon to name their own counsel and agents, and such as they named were assigned by the court, as follows :—

THOMAS KENNEDY,	EDWARD HANLON,
GEORGE LEWIS,	THOMAS COOKE,
PATRICK HART,	JOHN LOWRY.

Counsel—Messrs. CURRAN and M'NALLY.

Agent—Mr. A. FITZGERALD.

THOMAS MURPHY, | MICHAEL MAGUIRE.
 Counsel—Messrs. M'NALLY and LYSAGHT.
 Agent—Mr. M. KEARNEY.

HENRY FLOOD.
 Counsel—Messrs. FLETCHER and RIDGEWAY.
 Agent—Mr. F. FLOOD.

In the interval between the October commission and the present, a person of the name of James Weldon was apprehended upon a charge of High Treason, and he together with such as had been previously in custody, were served with copies of the indictments and the captions thereof, five days before the first day of this commission.

This day the prisoners who had been in custody at the last commission were severally arraigned and pleaded Not Guilty.*

When Flood was put to the bar,

Mr. RIDGEWAY moved that the caption of the indictment might be read. The court ordered it to be read, but the Clerk of the Crown said, he had it not in court: whereupon it was sent for, and being brought in, it appeared to be on paper. The counsel then objected to its being read, and moved that the indictment be quashed for want of a caption. He said the caption ought to make part of the record, and be annexed to the indictment. Here it is neither—the caption is upon paper, whereas the records of this court are always upon parchment, as the indictment is, and the caption here is detached from the indictment. In several cases in the State Trials, in the Rebels' case in Fost. 2, and in Hardy's case, 1794, the caption and the indictment form one continued narrative, and it would be absurd if it were otherwise. In Fost. 4, the caption states, "the bill hereunto annexed is a true bill," &c.

Mr. ATTORNEY-GENERAL.—My lords, the prisoner has been served with a copy of the caption and the indictment, which is all that is required. He has no right to look into the record. He might as well object, that the indictment consisted of several skins of parchment, when it is too long to be contained in one.

The CLERK OF THE CROWN said, that the caption did make part of the record.

Mr. RIDGEWAY.—If the officer assert as a fact, what every man who has sight must be convinced is not so, I know not how to answer.

The COURT said, that upon this point, they must be satisfied with the averment of their officer, and desired him to proceed and read the caption.

This was accordingly done, after which the indictment was read, and the prisoner was asked, was he guilty, or not?

Mr. RIDGEWAY said he intended to plead that there was no caption to the indictment, but that his client narrated for his trial and instructed

* The prisoners had, upon the first day of the October commission, presented petitions, stating that they were ready for their trial and praying they might be tried in that commission.

him to waive objections in point of form, which he had thought it his duty to state.

The prisoner then pleaded Not Guilty.

James Weldon was then put to the bar and desired to name his counsel; he named Mr. Curran and Mr. M'Nally, who were accordingly assigned to him. Immediately after this, the Clerk of the Crown was proceeding to arraign the prisoner.

Mr. M'NALLY.—My lords, I object to the prisoner's being arraigned at this time; I have only been assigned this morning: it is impossible I could be prepared to advise him in his plea. It may be said, he was served with a copy of the indictment; but I apprehend, counsel are not at liberty to consult with a prisoner in custody for treason, until they are assigned; therefore I submit, he ought to be allowed five days before he is called upon to plead.

Mr. ATTORNEY-GENERAL.—My lords, if the prisoner wants time to prepare for his defence, I have no objection to anything that is reasonable. He might have consulted with counsel after the copy of the indictment was served upon him; for although only two counsel are allowed to plead in court for him, yet he may have as many to advise with as he pleases, and directions were given, that counsel should be admitted to him.

Mr. Justice CHAMBERLAIN.—In fact this man has not had counsel assigned till this morning, and as the Attorney-General does not seem to object, I think it would be better to postpone his arraignment.

Mr. Justice FINUCANE.—The act of parliament is not peremptory as to the assignment of counsel before pleading.

Mr. Baron GEORGE.—No objection is made to allowing the prisoner time.

Mr. ATTORNEY-GENERAL then said, he intended to have Weldon tried first, and therefore all the other trials must be postponed. He mentioned Saturday for the arraignment and trial of Weldon, which day was accordingly appointed. But on Friday Mr. Attorney-General moved to postpone the trial to Monday, lest an objection should be made, that the prisoner had not five clear days.

Mr. Baron GEORGE.—There is another reason for postponing the trial; if it began on Saturday it might last till Sunday, which might be productive of inconvenience. Therefore let the trial stand for Monday.

MONDAY, December 21st.

The prisoner being put to the bar, Mr. M'NALLY applied to have the caption read.

Mr. ATTORNEY-GENERAL opposed this application; the prisoner is not entitled to have the caption read, he has an attested copy, and can avail himself of that.

Mr. M'NALLY cited Fost. 2, 228, 230, to show that the caption is necessary to assist the prisoner in pleading.

The COURT said the caption ought to be read. The prisoner must be furnished with a copy of the whole record; how can he know whether he has such a copy unless the whole record be read.

The caption was accordingly read and appeared to be engrossed upon parchment and annexed to the indictment.

"Be it remembered, that at an adjournment of a commission of Oyer and Terminer and general gaol delivery, held in and for the county of the city of Dublin, in that part of the King's Courts, Dublin, where the Court of King's Bench usually sits, on Monday the 26th day of October, in the year of our Lord God, one thousand seven hundred and ninety-five, and in the thirty-sixth year of the reign of our Sovereign Lord George the Third, King of Great Britain, France and Ireland, Defender of the Faith and soforth, before William Worthington, Lord Mayor of the said city, Michael Smith, Esq., one of the Barons of his Majesty's Court of Exchequer in the said kingdom of Ireland, Mathias Finucane, Esq., one of the Justices of his Majesty's Court of Common Pleas in the said kingdom of Ireland, and Denis George, Esq., one other of the Barons of the said court of Exchequer in the kingdom of Ireland, and others, their fellow Justices and Commissioners of our said Lord the King, in and for the whole county of the said city of Dublin, assigned by the letters patent of our said Lord the King, under the great seal of his said kingdom of Ireland, bearing date at Dublin the 20th day of June, in the first year of the reign of our said Lord the King, directed to Patrick Hamilton, Esq., the then Lord Mayor of the said city of Dublin, and the Lord Mayor of the said city for the time being, John Lord Baron Bowes of Clonlony then being Chancellor of the kingdom of Ireland, and the Chancellor of the said Lord the King of the said kingdom for the time being, Chaworth Earl of Meath, Richard Earl of Ross, Humphrey Earl of Lanesborough, Richard Lord Viscount Fitz-William, Sir William York, then being Chancellor of the Court of Exchequer of the said Lord the King of his said Kingdom of Ireland, and the Chancellor of the said Lord the King of his Court of Exchequer for the time being, Warden Flood, then being Chief-Justice of the Court of Chief Place of our said Lord the King, in his said kingdom, and the Chief-Justice of his said Court of Chief Place for the time being, Richard Rigby, then Master of the Rolls in the said kingdom, and the Master of the Rolls in the said kingdom for the time being, Richard Aston, then being Chief-Justice of the Court of Common Pleas of our said Lord the King in the said kingdom and the Chief-Justice of the Court of Common Pleas for the time being, Edward Willis, then being Chief Baron of the Court of Exchequer of the said Lord the King and the Chief Baron of the said Court of Exchequer, for the time being, Richard Mountney, then being second Baron of the said Court of Exchequer, Arthur Dawson, then being third Baron of the said Court of Exchequer, Robert French, then being second Justice of the said Court of Common Pleas, Robert Marshall, then being third Justice of the said Court of Common Pleas, Christopher Robinson, then being second Justice of the said Court of Chief Place, William Scott, then being third Justice of the said Court of Chief Place; and the Justices of the said Courts of Chief Place and Common Pleas, and the Barons, of the said Court of Exchequer, respectively, for the time being and others in the said letters named, to enquire by the oaths of good and lawful men of the said county of the city of Dublin, and by other ways, means and methods whereof the truth may the better be known as well within liberties as without, of all treasons, misprisions of treasons, insurrections, rebellions, counterfeits, clippings, washings,

unlawful coinings and other falsifying of money of Great Britain or other money current in the said kingdom of Ireland by proclamations, burnings and of all murders, felonies, manslaughters, killings, robberies, burglaries, perjuries, forgeries, rapes, unlawful assemblies, extortions, oppressions, riots, routs, crimes, contempts, deceits, injuries, escapes and other offences and causes whatsoever as well against the common law of the said kingdom of Ireland, as against the form and effect of any statute, act ordinance or provision theretofore made, ordained or confirmed, by any person or persons within the said county of the city of Dublin, in anywise done, committed or perpetrated, or thereafter to be done committed or perpetrated, and of all accessaries to the said offences, and every of them, within the said county of the city of Dublin, as well within liberties as without, by whomsoever and howsoever had, done, perpetrated or committed, by any person or persons, upon any person or persons, at any time howsoever, and in any manner whatsoever, and that the said treasons, and other the premises, to hear, examine, discuss, try, finish, execute and determine according to the laws and customs of the said kingdom of Ireland, and to deliver the gaol of Newgate, in the county of the said city of Dublin, of all the prisoners and malefactors therein, as often as occasion should require. It is presented upon the oath of twelve good and lawful men of the body of the said county of the city of Dublin, whose names here follow, that is to say: Robert Powell, Daniel Dickenson, James Mills, Andrew Callage, Hall Lamb, James Blacker, Richard Wilson, William Henry Archer, Joshua Manders, Robert Hanna, Francis Hamilton, Mark Bloxham, Lewis Hodglon, John Gorman, William Evans, Robert Newell, William Lindsey, William Berry, John Duncan, William Crombie, William Duncan, Richard Cranfield, Bladen Sweny, in manner and form here following, that is to say,

County of the city of } "The Jurors of our Lord the King upon
Dublin, to wit. } their oath present that an open and public
 war, on the 20th day of August, in the thirty-fifth year of the reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith and soforth, and long before, was and ever since hitherto by land and by sea, and yet is carried on and prosecuted by the persons exercising the powers of government in France, against our most Serene, Illustrious, and Excellent Prince, our said Lord the now King, and that James Weldon, of the city of Dublin, Yeoman, in the said county of the city of Dublin, a subject of our said Lord the King of his kingdom of Ireland, well knowing the premises but not having the fear of God in his heart, nor weighing the duty of his allegiance, and being moved and seduced by the instigation of the Devil, as a false traitor of our said Lord the King, his supreme, true, lawful, and undoubted Lord the cordial love and true obedience which every true and dutiful subject of our said Sovereign Lord the King towards him our said Lord the King should bear, wholly withdrawing and contriving with all his strength, intending the peace and common tranquillity of this kingdom of Ireland to disturb, and the government of our said Lord the King of this his kingdom of Ireland to subvert, and our said Lord the King from the regal state, title, honour, power, imperial

crown and government of this his kingdom of Ireland to depose and deprive, and our said Lord the King to death and final destruction to bring, he the said James Weldon, on the 20th day of August, in the thirty-fifth year of the reign of our said Lord the King, and on divers other days and times, as well before as after that day, at Suffolk-street, in the parish of St. Andrew, in the city of Dublin, and in the county of the said city of Dublin aforesaid, with force and arms, falsely, wickedly and traitorously did compass, imagine and intend the said Lord the King, then and there his supreme, true and lawful Lord of and from the royal state, crown, title, power, and government of this his realm of Ireland to depose and wholly deprive, and the said Lord the King to kill and put to death, and that to fulfil and bring to effect his most evil, wicked and treasonable imaginations and compassings aforesaid, he the said James Weldon, as such false traitor as aforesaid, and during the said war between our said Lord the King and the said persons exercising the powers of government in France, to wit, on the said 20th day of August, in the thirty-fifth year of the reign aforesaid, at Suffolk-street aforesaid, in the parish aforesaid, and in the county of the city of Dublin aforesaid, with force and arms, falsely, maliciously and traitorously, did join, unite and associate himself to and with divers false traitors to the jurors unknown, and did then and there with such false traitors to the jurors aforesaid unknown, enter into and become one of a party and society formed and associated under the denomination of Defenders, with design and for the end and purpose of aiding, assisting and adhering to the said persons so exercising the powers of government in France, and so waging war as aforesaid, against our said Sovereign Lord the now King, in case they should invade or cause to be invaded this his kingdom of Ireland; and afterwards and during the said war between our said Lord the King, and the said persons, so exercising the powers of government in France, and enemies of our said Lord the King, on the 20th day of August, in the said thirty-fifth year of the reign of our said Lord the King, and on divers other days, as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, and county of the said city of Dublin aforesaid; he the said James Weldon as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes aforesaid, did with divers other false traitors, whose names are to the Jurors of our said Lord the King as yet unknown, then and there meet and assemble to confer, treat and consult for and about the adhering to, joining, aiding and assisting of the said persons exercising the powers of government in France as aforesaid, and being enemies of our said Lord the King as aforesaid, in case they should invade this his kingdom of Ireland, and afterwards to wit, on the 20th day of August, in the thirty-fifth year of the reign aforesaid, and on divers other days as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, in the city of Dublin aforesaid, and county of the city of Dublin aforesaid, the said James Weldon, as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes aforesaid, did then and there, with divers other false traitors, whose names to the said jurors are yet unknown, wickedly and traitorously associate and unite

himself to and with divers false traitors unknown to the jurors aforesaid, and did along with said false traitors to the jurors aforesaid unknown, enter into and become one of a party and society united and associated under the denomination of Defenders, with design and for the end and purpose of deposing, subverting and overturning the government of this kingdom as by law established, and so associated and united as aforesaid, did then and there, and on divers other days and times as well before as after that day, meet and assemble, to confer, consult and deliberate on and about the means and measures for affecting his aforesaid traitorous and nefarious designs and purposes. And afterwards to wit, on the said 20th day of August, in the said thirty-fifth year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, and county of the city of Dublin aforesaid, the said James Weldon as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes, did then and there, with divers other false traitors, whose names to the said jurors are yet unknown, wickedly and traitorously associate and unite with divers other false traitors, to the said jurors as yet unknown, and did along with such false traitors to the jurors aforesaid unknown, enter into and become one of a party and society, united and associated under the denomination of Defenders, with design and for the end and purpose of subverting and overturning the Protestant religion in this kingdom by law established, and so associated and united as aforesaid, did then and there, on divers other days and times as well before as after that day, meet and assemble with divers false traitors, to the jurors as yet unknown, confer, consult and deliberate, on the means and measures for affecting his aforesaid traitorous and nefarious design and purposes. And afterwards to wit, on the said 20th day of August, in the said thirty-fifth year of the reign aforesaid, and on divers other days as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, in the city of Dublin aforesaid, and in the county of the city of Dublin aforesaid, the said James Weldon as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes aforesaid, and then and there, with divers false traitors, whose names to the said jurors are yet unknown, wickedly and traitorously, in order to enlist and procure one William Lawler, who aiding and assisting to the said persons so exercising the powers of government in France, and enemies of our said Lord the King as aforesaid, in case they should invade or cause to be invaded this his kingdom of Ireland, did then and there traitorously administer an unlawful oath to the said William Lawler, to the purport following, that is to say,—“I am concerned. So am I. With who? With the National Convention, (meaning thereby the National Convention of France.) What is your designs? On freedom. Where is your designs? The foundation of it is grounded in a rock. What is your designs? Cause to queal all nations, dethrone all —gs, (meaning thereby all kings,) to plant the true religion in the hearts, be just. Where did the cock crow when the whole world heard him? In France. What is the pass word? Eliphismatia.” And afterwards to wit, on the said 20th day of August, in the thirty-

fifth year of the reign aforesaid, and on divers other days, as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, in the city of Dublin aforesaid, and county of the city of Dublin aforesaid, the said James Weldon as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes aforesaid, did then and there, with divers other false traitors, whose names to the said jurors are yet unknown, wickedly and traitorously, in order to enlist, corrupt and procure one William Lawler, to be aiding and assisting to the said persons, so exercising the power of government in France, and enemies of our said Lord the King as aforesaid, in case they should invade, or cause to be invaded, this his kingdom of Ireland; and to bind and engage himself thereto, did then and there traitorously administer to and instruct the said William Lawler, to rehearse and repeat an oath, the said James Weldon having then and there, for that purpose sworn him the said William Lawler, a certain profession, declaration, and catechism to the purport following, that is to say; "I am concerned. So am I. With who? With the National Convention, (meaning thereby the National Convention of France.) What is your designs? On freedom. Where is your designs? The foundation of it is grounded in a rock. What is your designs? Cause to queal all nations, and dethrone all —gs, (meaning thereby all kings,) to plant the true religion in the hearts—be just. Where did the cock crow when all the world heard him? In France. What is the pass word? Eliphismatis." And afterwards, to wit, on the said 20th day of August, in the said thirty-fifth year of the reign aforesaid, and on divers other days, as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, in the city of Dublin aforesaid, and county of the city of Dublin aforesaid; the said James Weldon as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes aforesaid, did then and there with divers other false traitors, whose names are to the said Jurors as yet unknown; wickedly and traitorously in order to encourage, corrupt, procure and enlist the said William Lawler, to become one of a party and society, formed for the purpose of subverting the government of this kingdom of Ireland, as by law established; did then and there traitorously encourage, corrupt, procure and enlist the said William Lawler to join himself to and become one of a party or society formed and united for the purpose of subverting the government of the kingdom of Ireland, as by law established. And afterwards, to wit, on the 25th day of August, in the said thirty-fifty year of the reign aforesaid, and on divers other days, as well before as after that day, with force and arms, at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, in the city of Dublin aforesaid, and in the county of the city of Dublin aforesaid, the said James Weldon as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes aforesaid, did then and there with divers other false traitors whose names to the said jurors are yet unknown, wickedly and traitorously, in order to enlist and procure one William Lawler to be aiding and assisting to the persons exercising the powers of government in France, and enemies of our said Lord the King as aforesaid, in case they should

invade or cause to be invaded this his kingdom of Ireland, did then and there, traitorously administer an unlawful oath to the said William Lawler, to the purport following, that is to say,—‘I, William Lawler, of my own good will and consent, do swear to be true to his Majesty King George the Third, whilst I live under the same government—More, I swear to be true, aiding and assistant to every brother bound to me by this application, and in every form of article from its first foundation, January 1790—And in every amendment hitherto—And will be obedient to my committees, superior commanders, and officers, in all lawful proceedings and not otherwise, nor will I consent to any society or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother, nor in any violation of the laws, but to protect my life and property, and the lives and properties of my brothers—And I will subject myself to my committee-men in all lawful proceedings and not otherwise, during the reign of his Majesty King George the Third, whilst I live under the same government—I likewise swear I will meet when and where my committee will please, and will spend what is pleasing to president and company—I will not quarrel nor strike any person whatsoever, knowing him to be such, but will live lovingly and friendly with every one under that denomination—I will not rise any fight or quarrel on account of my present intrus, or back that for unto my brotherhood.’ *And the said jurors of our said Lord the King upon their oath further present, that an open and public war on the said 20th day of August, in the thirty-fifth year of the reign of our said Lord George the Third and soforth, and long before and ever since hitherto by land and by sea, hath been and is carried on and prosecuted by the said persons exercising the powers of government in France, against our most serene, illustrious and excellent prince George the Third, now king of Ireland, and soforth. And that the said James Weldon a subject of our said Lord the King of his kingdom of Ireland, well knowing the premises, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, as a false traitor against our most serene and illustrious and excellent Prince George the Third, now King of Ireland, and soforth ; and contriving, and with all his strength intending the peace of this his kingdom of Ireland to disturb, and the government of this his kingdom of Ireland to subvert, he the said James Weldon, on the 20th day of August, in the thirty-fifth year of the reign of our said Lord the now King, and on divers other days and times as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, in the city of Dublin aforesaid, and county of the said city of Dublin aforesaid, unlawfully and traitorously was adhering to, aiding and comforting the persons exercising the powers of government in France, and being enemies of our said Lord the King as aforesaid, and that in the prosecution, performance and execution of the said traitorous adhering of the said James Weldon to the persons exercising the powers of government in France, and being enemies of our said Lord the present King, to wit,

* Second Count.

on the said 20th day of August, in the said thirty-fifth year of the reign aforesaid, at Suffolk-street aforesaid, in the parish aforesaid, and in the county of the city of Dublin aforesaid, with force and arms falsely, maliciously and traitorously did join, unite and associate himself to and with divers false traitors to the jurors as yet unknown, and did then and there with such false traitors to the jurors aforesaid as yet unknown, enter into and become one of a party and society formed and associated under the denomination of Defenders, with design and for the purpose of aiding, assisting and adhering to the said persons so exercising the powers of government in France, and so waging war as aforesaid with our said Sovereign Lord the now King, in case they should invade or cause to be invaded this his kingdom of Ireland, and afterwards and during the said war between our said Lord the King and the said persons so exercising the powers of government in France, and enemies of our said Lord the King, on the 20th day of August, in the said thirty-fifth year of the reign of our said Lord the King, and on divers other days as well before as after that day, with force and arms at Suffolk-street aforesaid, in the parish of St. Andrew aforesaid, and county of the said city of Dublin aforesaid, he the said James Weldon as such false traitor as aforesaid, in further prosecution of his treason and traitorous purposes aforesaid, did with divers other false traitors whose names are to the jurors of our said Lord the King as yet unknown, then and there meet and assemble to confer, treat and consult for and about the adhering to, joining, aiding and assisting of the said persons exercising the powers of government in France as aforesaid, and being enemies of our said Lord the King as aforesaid, in case they should invade or cause to be invaded this his kingdom of Ireland."

The same overt acts were stated in support of the second count, and in the same manner as set forth in the first. The indictment concluded in this way—"against the duty of the allegiance of the said James Weldon, against the peace of our said Lord the King, his crown and dignity, and against the form of the statute in such case made and provided."

CLERK OF THE CROWN.—How say you, James Weldon, are you guilty of this treason in manner and form as you stand indicted and arraigned or not?

Mr. McNALLY.—My lords, I submit to your lordships that this indictment must be quashed, the caption annexed to it, being illegal both as to form and substance. The first error that appears upon the face of the caption, is that it lays no *venue*; it does not show whether the bill was found by the grand jury of the city or the county of Dublin. I am aware that by a statute this court is taken to be in the city and the county. Locally it is in the county of Dublin: artificially it is in either; but the caption does not set forth any county in the margin: if it did, I admit it might be unnecessary to repeat that county in the caption; but all that is stated in the body of the caption is, "the place where King's Bench usually sits," without averring it to be in the city of Dublin, where the offence is supposed to be committed. 2dly. The caption states an adjournment of a session, but does not state when the original session began, Str. 865. 2 Hawk. 362. 3dly. It does not state that the grand jury were sworn and charged,

4 Bl. Com. Fost. 4.* 2 Hal. P. C. 167. s. 6, 9. The caption states that it is presented upon the oath of twelve men "that is to say," and it sets out the names of twenty-three; this is repugnant, for the latter part is contradictory to the former. 4thly. The caption does not state the additions of the jurors; the precedent in the appendix to 4 Bl. Com. states the foreman to be a baronet and the rest are esquires. The necessity of the addition is obvious; it is to ascertain the identity of the grand juror, for many objections may lie against him, he might be an outlaw, convicted of treason or felony and consequently disabled from serving upon a grand jury.

Mr. ATTORNEY-GENERAL rose to answer these objections, but was stopped by the court.

Mr. Justice CHAMBERLAIN.—The court do not think the objections founded. It is taken for granted, that the caption is part of the indictment: it is not;—it is only the style of the court, and where captions have been quashed, it has been upon *certiorari*, or writ of error.

The prisoner then pleaded in abatement—"And the said James Weldon says, that he is not a yeoman, but a soldier in his Majesty's 7th regiment of dragoons."

Mr. ATTORNEY-GENERAL.—I demur to this plea.

Mr. Justice CHAMBERLAIN.—Then you admit that he is not a yeoman.

Mr. ATTORNEY-GENERAL.—Is the plea so, my lord? I had mis-conceived it.

Then the plea was read, and after some conference among the counsel for the crown, Mr. ATTORNEY-GENERAL replied, and averred "that the prisoner is a yeoman, and this he prayed might be tried by the country." The counsel for the prisoner joined the *similiter*—"And the said James Weldon doth so likewise."

COURT.—You pray the usual process.

Counsel on both sides, said certainly; and the ATTORNEY-GENERAL prayed that a jury might be returned *instantly*.

It then became a question, to what time the plea related?—whether it meant, that he was a soldier at the time when the plea was put in—or at the time when the indictment was found?

Mr. CURRAN.—The meaning of the plea is, that the prisoner was never a yeoman, either at the time of his arrest, the time the indictment was taken, or at this day. It is a sort of objection to the identity that he is not the man presented by the grand inquest as a yeoman, for he is a soldier.

A pannel was then returned by the Sheriff, and twelve persons were sworn to try the issue, whether the prisoner be a yeoman.

Mr. ATTORNEY-GENERAL.—Gentlemen of the jury.—The prisoner is indicted for high treason, and he is described in the indictment as a yeoman, an issue is now joined upon that description and if it be found for him, the indictment must be quashed. The law requires, that an indictment must set forth what a party is; the prisoner is described as a yeoman; we shall produce a witness to show what he

* In Townley's Case (18 How. St. Tr. 334) the jury are stated to have been "sworn and charged to enquire"

is, and you will determine whether he be a yeoman, or not. The objection is as frivolous as can be conceived; it is a disgrace to justice that such objections are allowed, and I say this to shew you that if there be any doubt in the case, you will lean against the plea. What was the meaning of the word yeoman an hundred years ago, or what was the meaning of the Saxon word *geomman*, is not now the subject of enquiry. We will shew that the prisoner is a soldier in a regiment of horse; and the words yeoman and labourer have been applied indifferently as sufficient descriptions of persons in his situation. The counsel for the prisoner may shew from black letter books, what was the meaning of the word yeoman many years ago; but it is sufficient to describe a man to a common intent, and in the known use of words at the time of the indictment found. The word yeoman is applied to many different situations, as a person having land and entitled to serve upon a jury. If that be the appropriated meaning, it has not been so taken lately. There are yeomen of the King's guards—so are the attendants upon the Lord Lieutenant's person, and a variety of others in different situations. Therefore the insignificant word cannot be now made a ground of objection, this man being described with sufficient particularity. An objection might be made to a description of a man as one kind of artificer, when in truth he was of another, but the same objection cannot be made to the words yeoman or labourer.

Tresham Gregg, sworn.—Examined by the PRIME-SERJEANT.

Q. Are you gaoler of Newgate? **A.** I am.

Q. Do you know the prisoner? **A.** I know the prisoner, James Weldon, since he was committed to gaol.

Q. How long since is that? **A.** About a month.

Q. Had you any conversation with him? **A.** I asked him, what business he was of. He said he was a breeches-maker from the county of Meath, but that he had been a soldier for two years; that he was a soldier in the Black Horse and was taken in Cork.

Cross-examined by Mr. CURRAN.

Q. By virtue of your oath, do you know what a yeoman is? **A.** I do not.

Mr. CURRAN.—Then you may go down, and enquire before you come to prove that a prisoner is a yeoman.

Here the evidence closed.

Mr. CURRAN.—Gentlemen of the jury,—the law requires that there should be a determinate degree of certainty in the specification, not only of every crime, with which any man is charged, but also of the person charged: and it is not for us to say, that any certainty which may be required in favour of life, or any objection permitted by the law, is frivolous, or disgraceful to the jurisprudence of the country. It is a known fact, that the certainty of description which has been adhered to in this country, has been departed from in a neighbouring country, and hundreds of innocent persons have perished for want of it. This man is indicted as a yeoman, and if you have any doubt upon the case, the uniform principle of the law is, that in such case you should lean in favour of the prisoner. But gentlemen, there is

no doubt in the case; your oath is, to try whether this man be a yeoman. Our society is divided into different degrees, and the inferior orders with regard to one another, and the peers who are above them have correlative appellations. The name of yeoman is a known and defined name. It is not to black letter that I shall refer the court, or to books that are as little known as the pronunciation of the word: but to the commentaries of Judge Blackstone, who has written not many years ago. 1 Bl. Com. 406—"A yeoman is he that hath free land of forty shillings by the year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one, that is *probus & legalis homo*." He adds in the ensuing paragraph, "the rest of the commonality are tradesmen, artificers and labourers; who (as well as all others) must, in pursuance of the statute 1 Hen. V. c. 5, be stiled by the name and addition of their estate, degree, or mystery, and the place to which they belong, or where they have been conversant, in all original writs of actions, personal appeals and indictments, upon which process of outlawry may be awarded; in order as it should seem, to prevent any clandestine, or mistaken outlawry, by reducing to a specific certainty the person who is the object of its process." Thus distinguishing the man of property in land, from those who earn money by trades, as a tradesman or artificer, who must be described by their degree, or mystery. From this respectable authority and the plain sense of the case, the jury will find for the prisoner. You are not to calculate consequences. If the man is entitled to the benefit of the objection, you are sworn to give it to him, and you are not to depart from that oath upon being told, that the objection is frivolous, or disgraceful to justice.

Mr. Justice CHAMBERLAIN.—I wish that counsel in speaking to this point, would argue, whether we are to advise the jury upon the common acceptance of the word, or whether we are bound by the strict letter of the law?

Mr. Baron GEORGE.—Shakspeare seems to have considered a soldier synonymous with yeoman, and Dr. Johnson, in his second definition of the word, says, "it seems to have been anciently a kind of ceremonious title given to soldiers; whence we have still yeoman of the guard."

"Tall yeomen seemed they and of great might,
And were enraged ready still for fight.—SPENSER.

"Whose limbs were made in England shew us here,
The mettle of your pasture."—SHAKSPEARE, Hen. V.

Mr. PRIME-SERJEANT.—My Lords, yeoman is at this day the general description of a man who is not a gentleman, or an esquire; for if a man has acquired no addition from his mystery, trade, or craft, he is a yeoman. The rules of law must adapt themselves to the growing occasions of the times, and that man will be effectually described as a yeoman, who has acquired no other addition, by which he could be discriminated. In common reason, it is to be considered as the general description of a man, who has not acquired any other. A soldier most unquestionably cannot be a description under which a man could be indicted. Burgess is not a good description—nor is citizen, nor

servant ; neither can a soldier, because it is not general enough upon which to arraign a man.

Mr. SOLICITOR-GENERAL—The single question is, whether under the statute of additions, 1 Hen. V. this description be sufficient ? The authority of Shakspeare and Johnson is decisive to shew, that a soldier is a yeoman. 2 Inst. 669. If a man be named a yeoman, he cannot abate the writ. Is this such a name as the prisoner may be known by ? He has given no evidence of his being of any art, or mystery, and it is impossible for those concerned for the crown to know in all cases, the true art, or mystery of a person accused. Before the statute of Hen. V. no description was necessary, and it was enacted to remove objections made in outlawries. But where a party is forthcoming, the argument is done away. Yeoman is a generic term, including many degrees, and is fully sufficient to answer the intention of the statute.

Mr. SAUBIN, same side.—This plea is founded upon the statute of additions, by which it was provided that persons indicted, should be described either by their state and degree, or by their mystery, or trade ; if they were of any mystery or trade. Ever since the statutes was enacted, it has been in the option of the prosecutor to describe the person accused by his rank, or his trade ; it is not necessary to describe him by both. From Lord Coke's argument upon the statute it appears that state or degree mean one and the same thing ; "The state or degree wherein a subject standeth." There are many persons who have no trade and who must be described by some rank. A soldier is no trade, and he stands in the nature of a servant taken into the pay of the crown, and does not come within the description of mystery, or trade—a servant is not of any mystery or trade. See then the alternative offered to the prosecutor. Where a party has no trade, or mystery, he must be described by his state or degree in the community. What are they ? If under the rank of nobility, they are divided into baronets, knights, esquires, gentlemen and yeomen, and there is no other description under the rank of nobility by which he could be described. Here we have shewn that this man was not of a trade by which he could be described, and therefore he must be described by his rank and condition, that is, a yeoman ; and if he be not a yeoman, of what other rank is he ?

Mr. Justice CHAMBERLAIN.—Is there any precedent of an indictment, describing a man as a soldier ?

Mr. Justice FINUCANE.—It appears from Kelyng, that sailor is a good addition, and Hawkins, in explaining the word mystery, says, "art, trade, or occupation."

Mr. Kells and **Mr. Ruxton** said a few words on the part of the prosecution. There being no precedent of an indictment against a man, as a soldier, was a strong argument to shew it was no good addition, and as to sailor, it may be observed, that it is a sort of mystery, for sailors serve a regular apprenticeship.

Mr. Justice CHAMBERLAIN.—The inclination of some of the court, indeed I may say it is, at present, the opinion of all the court, that yeoman within the common acceptation of the word, is a sufficient description of the person. We mean to tell the jury so, and after that to adjourn the court, and take the opinion of all the judges this even-

ing; and in case we should be wrong in the opinion now given, we shall take their advice how to proceed.

Gentlemen of the jury,—the issue you are to decide upon is—Whether the prisoner is a yeoman according to the strict legal definition of the word? Upon the authority of Judge Blackstone, who is certainly a very high authority in the law, the prisoner does not appear to be a yeoman. But according to the best writers in the English language, he is a yeoman. “It seems to have been an ancient kind of ceremonious title given to soldiers, yeomen of the guard.” Our present opinion is, that entitling the prisoner by a general title of courtesy is sufficient within the statute of additions—All society is divided into peers, baronets, knights, esquires, gentlemen, and yeomen, tradesmen, and artificers. At the time of finding this indictment, which is the material time for you to attend to, the prisoner was not an artificer. He had been bred a breeches-maker, but two years before he had given up that and became a soldier, so that, at the time of finding the bill, he could not be entitled a tradesman, or artificer, nor a gentleman, nor an esquire. Therefore under the common acceptation of the word, I think him sufficiently described, and I am strongly fortified by this circumstance, that no precedent is produced where a man is described as a soldier in an indictment. There may be a reason for sailors, because they serve an apprenticeship. Upon the best English authorities, yeoman is a title of courtesy. If we are wrong in this opinion, we shall be set right by the judges, who will be summoned this evening.

The jury retired, and after some deliberation, brought in a verdict that the prisoner is a yeoman.

The court immediately adjourned.

TUESDAY, December 22, 1795.

Mr. Justice CHAMBERLAIN.—We are to inform the prisoner and his counsel, that nine of the judges met at Lord Clonmel's, and they were unanimously of opinion that the direction given to the jury was right.

The prisoner then pleaded, Not Guilty.

THE JURY.

Sir Edward Crofton, Bart.	William Sparrow, merchant.
William Bury, Esq.	James French, merchant.
William Cope, Esq.	Ralph Mulhern, merchant.
Morgan Crofton, Esq.	Henry Pettigrew, merchant.
Rawden Hautenville, Esq.	William Blair, merchant.
Thomas Read, merchant.	John Smith, merchant.

The prisoner was then given in charge to the jury by the Clerk of the Crown, who read the whole indictment.

Mr. RUXTON opened the pleadings.

Mr. ATTORNEY-GENERAL.—My lords, and gentlemen of the jury. In this case it will not be necessary for me to do more than state the several circumstances which may be material to explain the evidence that will be produced; and even this statement is rendered necessary rather from the importance of the case, than any difficulty, which will occur. Were I to follow my own discretion, the case is so simple as

to need no statement, but merely to produce the witnesses upon the table. Gentlemen, the prisoner stands charged with the highest crime known to the law; the indictment states two species of that crime, 1st, compassing and imagining the death of the King:—2dly, with adhering to the enemies of the King. Gentlemen, the charge of compassing the death of the King, it may be necessary to explain in a few words; very few I shall use, because it will be the duty of the court to explain to you, the law upon that subject; therefore I shall only say so much as will enable your minds to apply the evidence to the charge stated in the indictment. The law has made it a capital offence to compass, or imagine the death of the King. Our mild laws, gentlemen, make the imagination of no other offence penal;—the crime must be committed in every other case. But the person of the King is sacred: So much depends upon his life, that for the sake of the public, their tranquillity, the preservation of their lives and properties, the law has guarded the life of the King in a peculiar manner. Any act, that in its nature tends to bring the life of the sovereign into danger, will support the charge of compassing his death. It is not necessary that the party accused shall have entertained the design of putting the King to actual death—of depriving him of life:—it is sufficient in the eye of the law, if the man has determined to act in such a manner as to bring that to pass. As to levy war—to change the government, which cannot be undertaken without hazarding the King's life—to bring war upon the kingdom must expose his life; and even though the party had in his own mind predetermined, not to put the King to death, yet, if he does those acts, which endanger his life, he is guilty. But, gentlemen, the law, which is thus careful of the sovereign's life, guards with equal care the lives of the subjects, who may be accused of intending to commit such a crime. Though the law makes the imagining the King's death a crime, yet it takes care that it shall be proved by such circumstances as evince the fact of the intention. There must be what is called an overt act stated upon the indictment; and that overt act must be proved, from whence it can be collected, that the design was taken to compass and imagine the King's death.

The other species of treason with which the prisoner is charged, is adhering to the enemies of the King—to persons in a state of war with these realms. Gentlemen, it is needless to say anything in explaining the nature of this crime:—it speaks itself. These, gentlemen, are the two charges, that he did compass the King's death—that he adhered to the King's enemies. Adhering to the King's enemies is evidence also of the compassing of the death of the King; because it is impossible to adhere to the enemies of the King without exposing that sacred life to danger. Gentlemen, I shall state the overt acts which are to support these charges. There are eight of them. If any one of them be proved, and the inference be drawn from it, which the indictment charges, though there be no evidence of the other seven, the prisoner must be found guilty. The first overt act states, that he associated with divers traitors unknown, and became one of a party under the denomination of Defenders for the purpose of assisting and adhering to the persons exercising the powers of government in France. The second is, that he assembled with

others to consult about adhering to the French. Thirdly, that he associated with persons called Defenders for the purpose of overturning the government of this kingdom as by law established. The fourth overt act is that he united with Defenders for the purpose of overturning the Protestant religion. Fifthly, that he enlisted one William Lawler to aid the persons exercising the powers of government in France, and administered to him an oath, upon which I shall presently make some observations. Sixth overt act states, that he enlisted Lawler to adhere to the French, should they invade this kingdom, and that he administered a catechism for that purpose. The seventh is, that he enlisted, corrupted and procured Lawler to become one of a party formed for the purpose of subverting the government. Eighth, that he enlisted him for the purpose of overturning the Protestant religion. Such, gentlemen, are the facts to be proved against the prisoner at the bar. I have stated the outlines of them. Some, or one of them must be proved, to sustain the charge. The same overt acts are laid as applicable to each of the species of treason charged against the prisoner.

Gentlemen, having stated, thus briefly, the charge and the nature of it, it becomes my duty to state the evidence that will be produced to sustain that charge. Before, however, I enter into the particulars of that evidence, it may not be improper to call to your recollection the state of things in this country at the time this offence is alleged to have been committed. In doing this, gentlemen, I shall state what is a notorious historical fact—what cannot be excluded from your minds—every man in the community must be impressed with it. For some years there have existed in this country, a number of persons, associated for wicked and atrocious purposes, styling themselves “Defenders.” They have from time to time for the last four or five years infested almost every part of this, in that respect, unhappy country. It has appeared in various trials in the different provinces, what the nature of the association of those wretches is:—it has appeared with what designs they associated, and though those who excited them have not appeared to public view, yet the manner of exciting them, and the object are but too plain. Since the year 1790, there have appeared in many counties, particularly in the northern, eastern and western counties, many persons under the denomination of Defenders, committing various outrages, and who have directed their attempts most particularly to disarm their fellow subjects. It has appeared in every investigation of this offence, that there have been in various counties, a number of persons, calling themselves “Committee Men,” who have guided the wretches they have deluded, directed their actions, and prescribed their movements;—pointed out the different courses they were to take, and administered oaths, “to be true and faithful to the committee men,”—“to obey the laws of the committee in all things,”—and these oaths they have guarded with such equivocations, that while they bound the parties to the commission of the most atrocious crimes, the oath should appear to be merely an oath of allegiance to the King, and submission to the laws of the country. These committees have existed in many counties of the kingdom, associating the lower orders of the people, by holding out promises to seduce uneducated men;—telling the poor that they

would enjoy the property of the rich ; that they were no longer to exist by their industry, and representing what they knew must be impossible, that all men were equal. If it were possible that such equality could be effected, the consequence would be the subversion of all government, and that all would be reduced to a savage state. Such, gentlemen, were the topics held out. In other places they propagated different things—and they dared to use the sacred name of religion, having no religion themselves, to forward the purposes of their wicked imposition. It has appeared in too many instances, and I am shocked while I state it, that these miscreants endeavoured to instil hatred and animosity into the minds of their converts against their fellow christians, though differing in some speculative points, professing the same religion, worshipping the same God, and seeking redemption through the same Jesus Christ. They represented, that their Protestant brethren were to be destroyed ; and this they attempted at a time when the legislature has been session after session, endeavouring to put them upon a footing with themselves ; to do away differences and to put an end to distrust. While I say this, gentlemen, let no man imagine, that we mean to impute anything of this kind to the general body professing the Roman Catholic religion. No, gentlemen, we attribute these abominable practices to others, who are seeking their own impious views. It is a subject so abhorrent to my nature, that I would not have mentioned it, but that it must come out in evidence ; for I would not suffer a word to escape my lips, that would tend to divide those, who are bound to that law, and that government which we all enjoy. The conduct of the committee men is historically known ; it is proved in Connaught, it is proved in several counties of the north and in Leinster ; and it is wonderful, that I have seen circumstances proved in the most distant parts of the west, corresponding with circumstances arising in the distant parts of the north and east—manifesting most clearly, that there was a united scheme to subvert the religion and the government of the country, by exciting sedition among the lower orders of the people. How these schemes were set on foot so universally, whether by French gold, or democratic clubs, is neither for you, gentlemen, nor me now to enquire—whether by the United Society of Dublin, or Belfast, I will not trouble you at present with taking notice, or enquiring. I only wish to impress upon your minds, that it is a fact historically known, that there does exist in the country such a scheme of rebellion and insurrection. Further to forward this plan, they have levied money from the poor wretches they seduced. A man sworn pays a shilling to the person administering the oath. The committee man receives the shilling, and if he swear many, the consequence is, a considerable income. In fact, the practice became common, and they spoke of a committee man in a village as they would of a shoemaker. “Where are you going?” “To the Defender-maker.” And to that Defender-maker the person paid a shilling, as if he had obtained something valuable.

So far, gentlemen, it is necessary I should state these facts to you. I hope in doing so, I do not overpass my duty. I do not mean to rouse your passions upon this subject ; and if I did, I could not. The statement I have made cannot affect the prisoner, unless it be proved

that he is such a man as is charged by the indictment, and it was necessary to state what I have, that you might understand the dangers and proceedings of the Defenders, which will be proved in evidence.

Gentlemen, the crime with which the prisoner is charged, is of the most awful nature in its consequences both to him, and to the public. The charge is this, that the man at the bar is guilty of a crime, the end and object of which was the destruction of the government under which we live—the destruction of the life and liberty of every man living under it—the destruction of our laws, which have been the envy of every one for seven hundred years. But this crime is greatly aggravated, if it be capable of aggravation, by the peculiar situation in which the prisoner stood. The prisoner at the bar was, at the time the offence was committed, a dragoon serving his Majesty in the 7th regiment of Guards, then in this city—placed in a situation to defend his country—sworn in the presence of God, for whom he seems to entertain a profound reverence, to defend his King and country. Such is the man, upon whose life your verdict is now to pass. Gentlemen, having stated the situation in which he was placed, and the duty he particularly owed to his King and country—having stated that he had solemnly sanctioned that duty in the presence of his God, it is the less probable, that he should commit the crime. If however he shall have committed the crime, then he will be less an object of mercy. Gentlemen, it will be proved, that this man administered an oath to a person of the name of William Lawler, which oath went to bind that person to be a Defender;—and now having mentioned the name of the person, who is the witness for the prosecution upon this trial; I shall state to you the nature of the evidence he is to give, and the manner in which the Crown became acquainted with the designs of the conspirators.

William Lawler, the witness, is a native of this city; he is by trade a gilder; served a regular apprenticeship to that trade—after which he practised at it for some time in this city, and then went to London where his father had removed. There he had the misfortune, and it is common to others as well as him, to read the words of that celebrated apostle Mr. Paine—to have his imagination somewhat heated by his writings, and he became a member of the London Corresponding Society, associated to improve our constitution.* There his principles were not much improved; he returned to Dublin, and became a member of a reading society:—it was called the *Telegraphe Society*; and also of another society of an admirable name, if it imported nothing more; that was the *Philanthropic Society*, where there were readings, and instructions, which if followed would have left the jury no constitution, no law, upon which to hear the Attorney-General state a case in the court of King's Bench. In that society they

* The London Corresponding Society originated about 1792, its grand object, parliamentary reform, on the Duke of Richmond's plan. Chief-Justice Eyre, in his charge on the trial of Tooke, said, "It is so composed, as by dividing and subdividing each division, as soon as it amounted to a certain number, sending off a new division so as to spread over the country, every other society, no matter how remote, it incorporates or affiliates, till it embrace an extent incalculable. It is undoubtedly a *political monster*." John Edwards, on Hardy's trial, deposed that this society was reading the address of Mr. Pitt and the Duke of Richmond when it was assailed by the police.—Madden, 1 vol. 1 series, 112.

received instructions from Mr. Burke, now a fugitive in America. The Defenders having broke out with unusual violence last summer, approached the capital, and began to disturb the outlets of the city. Lawler, a member of the society, and a republican, desirous enough (I will not attempt to conceal it) of disturbance was asked by some of the associates, or a discourse arose among them, Kennedy, Brady, Hart, and others, touching the Defenders. However the subject was first introduced, it was proposed, that Lawler should become a Defender, and for that purpose, some of these excellent clubbists (he will inform you who they were) proposed bringing him to the prisoner, then quartered in Dublin. Accordingly Lawler was brought by two persons of the names of Kennedy and Brady, to the prisoner, opposite the barrack gate, where the prisoner, Weldon was :—they sat for some time together. Weldon was then quartered in the barrack, but had a lodging within a door or two of an ale-house. Kennedy and Brady bring Lawler to this lodging ; after they had sat some time drinking punch, one Clayton came in, and they proposed to swear Clayton and Lawler. Accordingly they were sworn by the prisoner at the bar, and upon being sworn they paid their shilling a-piece. A discourse arose, after the swearing, touching the object and nature of the Defender's pursuits, and in the course of that conversation, the prisoner did avow, that there would shortly be a rising in the north, which would be joined by a person, whose name Weldon did not disclose—a rising to effect by force the purposes of these associated Defenders—and the other persons, Kennedy and Brady did unite in declarations of that sort. It will appear to you, gentlemen, that being thus united Defenders, Lawler was brought to three different meetings, where Defenders were assembled, particularly at a public house in Plunket-street—there were eighteen on nineteen together, and there a discourse arose, and a proposition was made, for buying powder and procuring arms, for the purpose of rising to seize the Castle of Dublin, of seducing the army from their duty, and by terrifying the good, industrious citizens of this town into a belief that the army had betrayed them, they might be put into the possession and under the government of miscreants such as these.

Such, gentlemen, are the facts, or pretty nearly (for I do not pretend to say they are precisely) such as will appear in evidence. I will now state the oath administered to Lawler by the prisoner, to whom he had been brought by Kennedy and Brady. The oath was this—"I, William Lawler, of my own good will, and consent, do swear to be true to his Majesty King George the Third." The oath which the prisoner himself had taken, but with a little addition to it, well worthy your attention, because it appears to me that what was designed to cover the guilt, is, if I understand it, the strongest manifestation of it. "I will be true, while I live under the same government"—The first part is an oath of allegiance, but not that of remaining under his government ; indicative, demonstrably, of a design to change the government :—it is not limited to the life of the King—but while the government remains, and when the oath was administered, the prisoner explained it, knowing that the object was to appear to be taking an oath of allegiance, while he was intending to destroy the King—This, said he, is put in to deceive the army,

that they may not discover the consequences. "I swear to be true, aiding and assisting to every free brother"—that is a name for a Defender known among themselves—"And in every form of article from the first foundation 1790, and every amendment hitherto, and will be obedient to my committees, superior commanders, and officers, in all lawful proceedings and not otherwise." Here there is the same sort of concealment, that is introduced in the part concerning the King; and, gentlemen, you must perceive, that "lawful proceedings" mean proceedings according to their laws—"nor will I consent to any society, or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother"—(Here Mr. Attorney-General stated the remainder of the oath as set out in the indictment.) This, gentlemen, was the oath administered, as the witness will swear, by the prisoner, to Lawler and Clayton—an oath, that needs little comment; it is impossible to read it, without putting the construction upon it, that it requires obedience to other laws, than those of the country. But if there were any doubt upon this, it will be removed by perusing the catechism, which was administered and attested at the same time. It is pretty much the same as has appeared in several counties of the kingdom. It is plain, that there was but one National Convention in the world at the time, that of France, and if you are satisfied of these overt acts, both species of treason will be proved, encompassing the King's death and adhering to his enemies. (Here Mr. Attorney stated the catechism, *vid.* indictment.) Whether —gs means kings, you will determine. A stroke is made first in the paper and immediately after and close to it, are the letters gs, being the final letters of the word kings. You are to determine how they meant to fill it up, whether with that word or not. Upon putting all the parts together, you will determine, what the object and tendency of the force intended to be raised was; whether it be not manifest, that there was an object by force to change the government, and by that to aid the powers of France, which is adhering to the King's enemies. "To equal all nations" was to put down the established government, and to place themselves as governors, and to exercise that tyranny, which is exercised in a neighbouring country, and using as a pretence, the sacred name of freedom.

Gentlemen, I have told you, that after this oath was administered, the witness attended two or three meetings of the Defenders, hitherto, possibly, conceiving that the Defenders might be used for the purpose of obtaining what was their grand object, a reform of the realm—a reform of the state, by making it a republic, and putting men, such as himself in the government. But after attending one or two meetings, he found the persons assembled had objects very different from what he had conceived. He was cautioned to take care how he should say, he was a Protestant, and some of those miscreants departing from that religion of which they pretended to be members, formed designs of massacring their Protestant brethren. Gentlemen, let me repeat it again, for I cannot repeat it too often, that we do not suppose, that any educated, or well-minded Catholic could entertain such a design;—but young men, whose minds are easily heated, for such there are, unlettered men, profligate men, without religion, or

morals, of the lower order of the people—these are the persons who are persuaded to entertain designs of this sort, and to the extent of their power would make the attempt. Lawler discovered this—a Protestant—seeing the tendency of their meeting, and knowing that the Defenders were associated throughout the kingdom, he became alarmed for the consequences, as to himself. He immediately disclosed the designs to a gentleman by whom he had been employed—a man of great worth and credit. Lawler told him confidently what had come to his knowledge. That gentleman, Mr. Cowen, did, as was his duty, inform government of the situation in which the state was, for several hundreds were united in the scheme. Government thus alarmed did immediately seize upon those against whom they had charges and they were committed to prison:—they now remain for their trials, and the prisoner Weldon is first brought up. One piece of evidence, gentlemen, I have omitted to state, which if it should appear in the light I state it, is of the utmost importance to this case. Weldon was a private in the 7th Dragoons, which was ordered to Cork, there to embark for foreign service. Thus taken from his gainful situation of a committee-man, or Defender-maker, it was necessary to appoint some person to succeed him. He gave the oath and the article to Kennedy, that he might become a committee-man. Kennedy was seized, and in the fob in his breeches were found the oath and the catechism, which Weldon had administered to Lawler. So that here is a fact, which could not be made for the occasion—a fact disclosed before Kennedy was seized—that the oath was delivered over to Kennedy, which is fully and clearly corroborative of the testimony of Lawler. We will now call him, and we doubt not you will examine this case, so important to society, with all due deliberation, and find such verdict, as will do you honour, and the public justice.

William Lawler, sworn.—Examined by the SOLICITOR-GENERAL.

Q. What has been your occupation—were you bred to any trade?
A. I was bred in the gilding line.

Q. Did you work at that trade in England or Ireland? A. In both places.

Q. First in Ireland, then in England? A. Yes, sir.

Q. You served an apprenticeship here? A. Yes.

Q. To whom? A. The first part to Mr. Robinson of College-green; the second part to Mr. Williamson of Grafton-street.

Q. Did you work at your trade in England? A. Yes.

Q. When did you return? A. About two years ago.

Q. When did you go to England? A. About the year 1791.

Q. During the time you were in England, did you belong to any political society? A. The London Corresponding Society.

Q. Upon your return to Ireland, did you bring any letters of introduction? A. One.

Q. To whom? A. To Archibald Hamilton Rowan.

Q. From whom? A. From Daniel Isaac Eaton, of Bishopsgate-street, London, printer.

Q. I suppose you delivered that letter? A. I delivered it to a servant of Hamilton Rowan. I called in about a week, and saw him.

Q. Where was he then? A. He came out of a back parlour, and we both went into the front parlour.

Q. Did you ever see him afterwards? A. Yes, I saw him in the street, and then in Newgate.

Q. After your arrival in Ireland, did you become a member of any society? A. I did, sir.

Q. Of what society? A. I do not rightly recollect the name of the first, but after it was dissolved —

Q. Where did it meet? A. At my rooms, at one Galland's in Crane-lane, and in Hoey's-court. When that was dissolved I became a member of another.

Q. What was the name of the second society? A. The Philanthropic Society.

Q. You do not recollect that the first had any particular name? A. It had a name, but I do not recollect it.

Q. Do you recollect the name of any particular gentleman of that Philanthropic Society? A. There was a Telegraphic Society.

Q. But do you remember the names of any persons belonging to the Philanthropic society? A. There was Burke and Galland in it.

Q. What Burke? A. Of the College.

Q. What is become of him? A. I do not know, but am informed he is gone to America.

Q. You afterwards became a member of the Telegraphic Society? A. They were both much about the same time.

Q. Was there any particular object of this society? A. Of the Telegraphic.

Mr. CURRAN.—I trust the gentlemen concerned for the crown will endeavour to keep the witness, whose evidence they are apprised of, to the strict rule of not drawing from him any answer, of the legality of which there may be a doubt. It is too general to ask what the object of a society was. I do not state this formally to argue upon it; but suggest it to their candour.

Mr. SOLICITOR-GENERAL.—If I knew of any other mode less leading than that which I have used, I would adopt it; but upon some points it is impossible to put a question without in some measure suggesting an answer to it.

Mr. CURRAN.—If I am pushed to the necessity of arguing the ground of the objection, it will require very little to be said in support of it. This man says he was a member of a particular society, and he is asked what was the object of that society, although the prisoner was not a member of it.

Mr. Justice CHAMBERLAIN.—You have not laid a foundation for asking this question, unless you establish a privity between this society and the prisoner.

Mr. SOLICITOR-GENERAL.—If I were driven to argue this question, I could support it by very recent adjudications. To shew the general schemes of treason, it is competent to examine as to the object and design of the persons charged as traitors; it was the uniform practice in the cases of Hardy and Tooke. But it is not kind to embarrass the court, if it can be avoided.

Q. Was there any other society, beside the Philanthropic and Telegraphic of which you became a member? A. Not till I became a member of the Defenders.

Q. Did they call themselves Defenders? A. They met in several parts of the town.

Q. You say you were of a society called Defenders? A. I believe about a fortnight after the Fermanagh militia left Dublin, Brady and Kennedy, called upon me to go to Weldon to be sworn as a Defender.

Q. (By the Court.—You cannot ascertain the time more particularly? A. No, my lord.

Q. Neither the month, nor the day? A. No, my lord, for Brady was to have brought me to Hanlon, but he leaving town, Brady brought me to Weldon.)

Q. Who was Kennedy? A. He was an apprentice to Mr Kennedy the glass-cutter in Stephen-street.

Q. What was Kennedy's christian name? A. I do not know.

Mr. CURRAN.—It strikes me, that this is not a fair examination, to examine the witness to the acts of two strangers unconnected with the prisoner. It is evidence to say, that two persons carried him, the witness, to the prisoner—but to say they called upon him with the intention of having him sworn is matter of opinion, and the evidence ought to consist of facts.

(Court.)—Unless the witness was sworn, the evidence will signify nothing.

Q. You saw Weldon, the prisoner? A. Yes.

Q. Where was it? A. At the stables belonging to the Horse-barrack.

Q. (By the Court.—Were Brady and Kennedy along with you? A. Yes, my lord.)

Q. When you met Weldon, where was he? A. He happened to be in the stable. On Brady's asking for him he came out; Brady introduced me to him; we then went to a public-house.

Q. Before you got to the public-house, did Weldon say or do anything? A. Not to me; he only asked me how I was, and shook hands with me.

Q. Did nothing particular pass in the manner of introducing you? A. No, sir; not there.

Q. When you arrived at the public-house, what happened there? A. When we went to the public-house, a naggin of whiskey was called for; we went into a back parlour. Brady told Weldon, he should go for Flood, who promised to meet them.

(By the Court.)—Do you mean that, Brady would go for Flood? A. Yes, that he, Brady, would go for Flood.

Q. Did he mention his Christian name? A. No, my lord, he did not.

Q. Did Flood come? A. Weldon desired Brady not to be long. After some time a little boy came in, and told Weldon his supper was ready. Weldon said that was his little boy, his son.

Q. What happened next? A. Weldon went to get his supper.

Q. Did Weldon return after? A. Brady returned first, and Clayton along with him.

(By the Jury.)—You were left alone then? A. Except Kennedy.

Q. Did Weldon return after any interval? A. He did, sir.

Q. How long after? A. In about a quarter of an hour.

Q. When he returned, what happened? A. After he sat down, and took a glass of punch, he said, "We had better make these two."

Q. Who did he mean? A. Me, and Clayton:—Brady asked him if he had a prayer-book? Weldon said he had.

Q. Did he take out a prayer-book? A. He did, and laid it upon the table.

Q. What happened after the book was produced? A. He pulled out some papers and desired Clayton and me to take hold of the prayer-book in our right hands.

Q. Do you recollect any conversation particularly relative to the object of swearing? A. Not before he put the oath.

Q. Were you told the purpose for which the oath was given? A. Yes.

Q. Were you informed of it before? A. Yes.

Q. You were brought to Weldon to be sworn? A. I was.

Q. He administered the oath? A. He did.

Q. How did it begin? A. It began, "I, A. B."

Q. You have had an opportunity of seeing the paper? A. Yes.

Q. What was it? A. He said it was a test.

Q. Should you know the paper again? A. Yes, sir.

[Here a paper was produced, beginning I, A. B., &c., which the witness said was the same paper he had seen with Weldon.]

Q. You were sworn to the contents of that paper?

Mr. CURRAN.—I object to this as a leading question—Were you sworn to the contents of that paper? What is the answer, but I was, or I was not?

Mr. SOLICITOR-GENERAL.—You say you were sworn to that paper? A. I was to two.

Q. Is this one of them? A. It is.

Q. Shew him the other—is that the other? A. Yes, sir.

[The paper beginning I, A. B., was then read. *Vid.* Indictment.]

Mr. M'NALLY.—I object to this paper going in evidence to the jury, on account of a variance between it and the indictment, the oath in the indictment is "I, William Lawler." This paper is I, A. B.

Mr. SOLICITOR-GENERAL.—How were you sworn to that paper?—Did you pronounce your name? A. Yes: "I, William Lawler."

[The second paper, called the Catechism, was then read. *Vid.* the Indictment.]

Q. After you were sworn, what happened next? A. After I was sworn to these papers?

Q. Yes: what happened? A. Brady asked him if he knew of any man to head them when they were to rise? Weldon said, there was one in the north, but did not mention his name.

Q. Had you any further conversation? Remember such as you can. A. He told us after, that before the time there would be letters sent through the country to tell them when they were to rise.

Q. What further happened? A. He was asked in what manner every one would become acquainted with it, or how would they get to know it?

Q. By whom was he asked? A. I believe by Kennedy.

Q. You are sure the question was asked? A. Yes: the question was asked.

Q. What answer did Weldon make? A. He said the committeemen would acquaint them.

Q. What further happened upon that occasion? A. Nothing I believe of any consequence.

Q. At that meeting? A. No, sir.

Q. You got no instructions of any kind? A. Weldon was to tell Brady of any meeting of Defenders.

Q. (By the Court.)—Did Weldon tell Brady so? A. Yes, my lord; he said he believed there would be a meeting in the next week in Thomas-street of Defenders, but did not mention the particular place.

Q. You have sworn to two papers, which have been read, had you any opportunity of seeing these papers at any other time and with whom? A. I saw them with Kennedy afterwards.

Q. Did you ever hear Weldon say anything of them? A. Weldon told me he would give these papers to Brady before he left town.

Q. (By the Court.)—Did he say he was leaving town? A. Yes, my lord, to go to Cork.

Q. Had you any intimation from anybody then present of any meeting to be had? A. Brady of a Sunday brought me to a meeting.

Q. (By the Court.)—Did Weldon say for what purpose he would leave the papers? A. He did not. He told us the signs so as to know a Defender.

Q. Tell the jury and the Court what the signs were? A. Weldon said, suppose you happen to be in company and want to know a Defender, the sign is to put the two hands joined backwards upon the top of the head, and pretend to yawn, then draw the hands down upon your knee or upon the table. Then the other answers, by drawing the right hand over the forehead and returning it upon the back of the left hand. The person in answer or reply to that draws the left hand across the forehead, and returns it to the back of the right hand. Upon shaking hands, they pressed the thumb of the right hand upon the back of the left, and not to be afraid to hurt the person, and if they asked what was the pass-word "Eliphismatis."

Q. Did he tell you anything else? A. No, he did not.

Q. I observe in that oath, there is a sentence to be true to George the Third, was there any conversation about that? A. At the time he finished it and we kissed the book, he asked if we liked it?—We said we did. He turned about, and looked to Brady, who said, "They knew what they came here for." "I told them before they came."

Q. Did anybody at that time talk about the words George the Third in the oath?

COURT.—That is a leading question.

Q. Was there any conversation about the oath?

MR. CURREN.—That is not a way in which to put a question in a case of life.

MR. SOLICITOR-GENERAL.—I will argue it, if the court have any doubt, and assign my reasons.

MR. CURREN.—I say a leading question is not to be put, and a question to which the answer is "yes," or "no," is a leading question.

MR. JUSTICE CHAMBERLAIN.—A leading question is that which suggests the answer. Now if he answer "yes" to this question, and stop there, that will not do; this question then does not suggest the answer.

Q. What did he say? A. He said, laughing, "that if the King's head were off to-morrow morning we were no longer under his government."

Q. Was that explaining the oath? A. The test that he put first. I asked him, was he not afraid of keeping these papers about him in consequence of being in the horse—he said, no; for they were never searched—but he did not care who saw the first paper, for the small paper was the principal. The first paper, he said, was only a cloak for the army.

Q. Did he say why? A. On account of swearing them to be true to the King. He said, he had sworn several of them, and that they would have some objection to part of it, but for that clause.

Q. (By the Court.)—Was it to reconcile them? A. Yes.

Q. Weldon said he would hand over the papers to Brady? A. Yes.

Q. Did you ever see them afterwards? A. With Kennedy.

Q. When? A. About a fortnight after Weldon went out of town.

Q. How came they into Kennedy's hands? A. I do not know.

Q. Did you know them? A. I challenged them at a place in Drury-lane—Murphy lived in Church-street; he and I were together, and I said—

Mr. M'NALLY objected to this evidence, and the witness was stopped by the court.

Q. Did Brady ever give you any intimation of any other meeting? A. He brought me to one in Plunket-street.

Q. To a meeting of what? A. Of Defenders.

Q. Were any of the same persons present that were with Weldon?

Q. (By the Court.)—When was this? A. I cannot recollect.

Q. Who was at that meeting? A. Kennedy was along with me at the same time.

Q. There were a good many there? A. There was a good many there.

Q. Was there anything done at that assembly?

Mr. CURRAN.—Do the counsel think that evidence?

Mr. SOLICITOR-GENERAL.—I do.

Mr. CURRAN.—What! affect a man's life by what was done at meetings, when he was an hundred miles off!

Mr. SOLICITOR-GENERAL.—I think it evidence, though the counsel asks the question with some astonishment. It is a rule of law, settled in a variety of cases, and recognized in the very last, that it being once established that the prisoner belonged to a society—

Mr. JUSTICE CHAMBERLAIN.—We are of opinion that this is evidence, that there is a foundation laid for it, by swearing that Weldon said, there were to be subsequent meetings, and that they should have notice of them from Brady; that is a foundation to let in evidence of what is done at those meetings.

Q. What happened at that subsequent meeting? A. They were putting down money on the table, and I was asked for sixpence, as a collection for powder—

Q. (By the Court.)—Who asked you? A. Brady desired me to put down sixpence. I told Brady I had not sixpence. Kennedy said he would lend me one—He gave me a shilling; I laid down the shilling and took up sixpence and gave it to Kennedy. I was told, that a

man of the name of Lockington then in the room was a captain of Defenders.

Q. What else happened? What powder did you mean? A. Gunpowder. I understood from them, that they wanted powder, as they were going out to get arms, but not that night.

Q. Did you understand from the company for what they wanted the arms? A. They did not say.

Mr. Baron GEORGE.—His conclusion, or his opinion is not evidence; but ask him as to facts done, or the conversations held.

Q. Did anything more pass? A. I understood there was to be a meeting. Brady and Kennedy both told me there was to be a meeting after that.

Q. Where did they tell you that? A. At the meeting.

Q. Did you see any of that company at any other place and where? A. I did.

Q. Where? A. At Stoneybatter, the corner of Arbour-hill.

Q. Who gave you notice? A. I do not know.

Q. You saw the same company? A. Some of them, Hart, Leary, Cooke and others.

Mr. Baron GEORGE.—Unless he got notice from Brady who was the person authorized it is not evidence.

Q. Did you see Brady or Kennedy afterwards? A. I did.

Q. Where? A. At their own place in Stephen-street.

Q. Were Brady and Kennedy at Stoneybatter? A. No, sir.

Q. Of what people was the subsequent meeting? A. Of Defenders.

Mr. CURRAN.—The court desired you not to give evidence of that.

Mr. SOLICITOR-GENERAL.—I hope the court have laid down no rule upon the subject.

Mr. Baron GEORGE.—We think you have not laid any foundation for the meeting at Stoneybatter.

Mr. SOLICITOR-GENERAL.—My lords, I submit this is evidence. Upon all occasions where the proceedings of any society are let in, all their acts are thereby made evidence. And so it was in the State trials lately, respecting the London Corresponding Society, and their conduct was evidence of overt acts. I have established the fact, that there was a meeting of a body of men called Defenders: this man was admitted into them, and the evidence goes to shew that subsequent meetings under the same appellation and obligation did assemble, and did certain acts which will illustrate the charge against the prisoner.

Mr. Baron GEORGE.—I do not say, whether they may not be evidence; but I think you have not yet laid a foundation to let in evidence of the meeting at Stoneybatter.

Q. You saw the oath afterwards in Kennedy's hands, upon what occasion? A. Upon a meeting with Murphy.

Q. Where? A. At Drury-lane in a workshop.

Q. You said there were certain signs communicated by Weldon by which a Defender might be known? A. Yes.

Q. Did you see them made use of upon any occasion and where? A. Hart has asked me if —

Mr. M'NALLY objected to this conversation as not having been at a meeting.

WITNESS.—Nobody is brought to a meeting unless introduced by a person who is a member.

Q. (By the Court.)—What do you mean by that? A. There must be some person in the place who will know him.

Q. Know him to be what? A. A Defender.

Q. Somebody went with you to Stoneybatter? A. Yes: Walsh.

Q. Who is he. A. A tailor.

Q. Was he at the former meeting? A. No.

Q. How did you know him? A. As being of the Philanthropic Society?

Q. Was he a Defender? A. He was from the signs he used.

Q. What Walsh is he? A. A tailor in Fishamble-street.

Q. Did you know any other person by the signs? A. Hart and Cooke.

Q. Were they of the meeting at Stoneybatter? A. Yes; and one Leary, a shoemaker.

Q. (By the Court.)—Did you see them make the signs? A. Cooke came out of a place where he held a school in Stoneybatter and shook me by the hand as a Defender.

Q. Was the meeting at Cooke's house? A. Not as I know of.

Q. Where was the meeting at Stoneybatter? A. At Murphy's—an inn where cars set up.

Q. (By the Court.)—Was Cooke at the meeting? A. Yes.

Q. Who else? A. Walsh and Hart.

Q. Did they all make the signs? A. Not there: they did at different times.

Q. Am I to understand, that you frequented these meetings as a Defender yourself? A. I did.

Q. How long did you continue to be a Defender? A. I cannot rightly tell.

Q. Can't you say how long? A. I believe about three months.

Q. (By the Court.)—What were the signs made use of at Stoneybatter? A. Shaking the hands.

Q. Anything else? A. No.

Q. How did you shake the hands? A. By pressing the thumb upon the hand.

Q. In the manner Weldon had told? A. Yes.

Mr. Justice CHAMBERLAIN.—Now we think there is a foundation laid to let in the proceedings there.

Q. What were the proceedings? A. Hart brought in a young man and swore him. I saw him lay a small paper upon a book.

Q. What kind of swearing was it that was made use of? A. I do not know. He told him he was brought to be sworn to be a Defender; he was not inclined to be sworn at first. Hart said he was to become a Defender, as the object was to get arms to assist the French when they would come.

Q. Was that man sworn? A. Yes.

Q. In the same way that you were? A. He told him the signs.

Q. Did you see them shewn to him? A. I did.

Q. (By the Court.)—Did you see him sworn? A. I did.

Q. In the same manner as before? A. I cannot say. There was a small paper laid upon a book: I was near the door and could not get near him, there being many in the room and it a small one.)

Q. You say you continued a Defender three months? A. I did, I believe.

Q. What induced you to cease being a Defender—did you tell anybody you were a Defender? A. I did.

Q. To whom? A. To Mr. Cowan in Grafton-street, after there was a meeting in Drury-lane at one Nolan's.

Q. Who were at that meeting? A. Hart, Cooke, Dry, Turner, Lockington, Kennedy, Flood, and Coffey.

Q. What was done there? A. We met for the purpose of getting arms.

Q. It was soon after that meeting you told Mr. Cowan? A. On the Monday.

Q. Why did you tell him? A. On account of what I heard Hart declare.

Q. What was that declaration? A. He tapped me on the shoulder, and I followed him to a window. He asked me if Dry and Coffey were not Protestants; I said I believed they were; he said he would not sit in company with them.

Q. Was this said aloud? A. No it was not.

MR. SOLICITOR-GENERAL.—Then I have no right to ask it.

Q. Did you hear anything said aloud? A. They said they would meet on the Sunday following, but I could not hear rightly what passed from attending to Hart. We were called to order twice for being from the company.

Q. Did you hear anything pass? A. Coffey was in the chair, and wanted to know how many Defenders there were in Dublin, that there might be officers put over them, that they might be all ready.

Q. You mentioned before, that there was a conversation about subscribing for powder; was there any conversation upon a subsequent meeting upon that subject? A. Not about taking arms.

Q. At Drury-lane? A. No.

Q. Where, then? A. At Stoneybatter.

Q. What did you hear there? A. I heard Hart desire some of them to go home for pistols and arms, that they might go out to take arms that night.

Q. To whom did he say that? A. To the company—at the house where the young lad was made a Defender; and after sitting some time and the others not returning, he thought they would not come back; he then desired every one remaining to lay their hands upon the table, and swear on their oaths to appear there on the Monday following with pistols to go get arms.

Q. What oath did he mean? A. The Defender's oath that they had taken. Hart was a committee-man it was said, and any person obliged to attend him when required.

Q. You saw Hart exercise the office of a committee-man by swearing another? A. I did.

Q. (By the Court.—Did Hart himself say he was a committee-man? A. No, he did not.)

Q. You heard no other conversation at that meeting? A. In about half an hour after, I said I would go home—Walsh came out and said —

[Counsel for the prisoner objected to this evidence as private conversation.]

Q. Why did you cease to be one of the body? A. In consequence of what Hart declared.

[This was also objected to.]

Q. You say there was to be a rising and somebody would head them in the north, whom Weldon did not name? A. So he said.

Q. Did Brady say anything about the same subject? A. No, he did not.

Q. Was the motive of the rising mentioned at the time? A. It was, he said there would be letters sent.

Q. But what was the motive? A. He did not say for what it was.

Cross-examined by Mr. CURRAN.

Q. What religion are you of? A. A Protestant.

Q. Have you always been a Protestant? A. Yes.

Q. Have you always professed that religion? A. Except when I was asked what religion I was among the Defenders, I said I was a Roman, in consequence of what Brady said to me.

Q. You are not, sir, upon a cross-examination under colour of an answer to give illegal evidence. I ask you, except in the case you mention now, have you always professed the Protestant religion? A. Yes, sir.

Q. Do you think you know the principles and grounds of what that religion are? A. I was brought up to be a Protestant, and do not like to change.

Q. Were you taught to believe that there was a God? A. Yes, sir.

Q. Were you taught that there was the suffering of his Son for the redemption of mankind? A. Yes, sir.

Q. Do you understand that your belief of these sacred doctrines is the foundation of the oath you have taken? A. When I had taken the oath?

Q. I ask you is it the foundation of the obligation of your oath? A. Yes, sir.

Q. Have you never, upon any occasion, declared that you did not believe there was a God?

The witness hesitated some time.

Mr. ATTORNEY-GENERAL.—I do not know what the consequence of the question may be, but it exposes the man to punishment.

Mr. McNALLY.—I am prepared to shew that this question is legal.

Mr. CURRAN.—Since the question is objected to, I will not press it. I will not ask you whether you have deliberately denied the existence of a God, since this protection is put about you, I am sure it is necessary for you.

Mr. ATTORNEY-GENERAL.—I did feel that it was a question which ought not to be put; I have no reason to conclude what his answer would be.

Mr. CURRAN.—After this kind of argument, I feel a sort of indecorum in pressing it.

Mr. PRIME-SERGEANT.—If this sort of use be made of the question, the court will determine upon it.

Mr. Justice CHAMBERLAIN.—If he be exposed to temporal punishment, he is not bound to answer.

Mr. CURRAN.—It would be a different thing, and a man might say it was my misfortune to be converted by argument of Atheists. He might have read Hume upon Miracles, and adopted his notions. But I do not press it.

Q. You have said that Kennedy and Brady brought you to the prisoner at the bar? **A.** Yes.

Q. Had you known him before? **A.** Never.

Q. You said, as you discovered their purposes, you discontinued? **A.** After what I heard from Hart, I went to Mr. Cowan and told him.

Q. After the conversation with Hart, you told Mr. Cowan? **A.** Yes.

Q. Was that not a conversation in which he communicated the bad purposes of the meetings? **A.** I did not like the idea of massacring all the Protestants.

Q. Was it by Hart, that idea was communicated to you? **A.** It was.

Q. And as soon as that was communicated to you, you formed the design of quitting them? **A.** Of telling what I heard.

Q. When was the first time you knew of their bad designs? **A.** I knew if they were to rise, that some persons were to be destroyed; but I did not think they would destroy all the Protestants.

Q. When did you first understand that any design of this kind existed? **A.** From the meetings I used to go to.

Q. How long after Weldon had gone to Cork? **A.** That I told?

Q. That you knew of any persons being to be destroyed? **A.** I knew at that meeting when Weldon was present.

Q. How long after Weldon's going to Cork was it, that you had this conversation with Hart? **A.** I do not recollect.

Q. Compute? **A.** I may think wrong.

Q. Think of it? **A.** I know the day of the month Hart told me, but I do not know the day of the month Weldon went out of the town.

Q. It was some time after, however? **A.** It was.

Q. Weldon said there was to be some meeting? **A.** He said he believed there would be a meeting in Thomas-street, and when there was, he would acquaint Brady, and Brady would acquaint us.

Q. Do you know how soon after that Weldon went to Cork? **A.** I do not.

Q. Do you know how long before the next meeting he went away? **A.** I cannot tell exactly; it might be a week or a fortnight.

Q. He had gone to Cork before? **A.** I believe so.

Q. Who gave you notice of it? **A.** I was with Brady and Kennedy and they brought me there.

Q. Did Brady say Weldon desired him to bring you? **A.** No.

Q. What did he say? **A.** He said there was a meeting of Defenders in Plunket-street, and asked me to go there.

Q. He did not say Weldon desired him to bring you? **A.** No.

Q. You said there was no mention at the meeting in Plunket-street of the French—that was not until the meeting at Stoneybatter? **A.** It was at the meeting at Stoneybatter.

Q. Do you recollect the distance of time between the meeting in Plunket-street and at Stoneybatter? A. I cannot tell.

Q. I do not mean the day of the month; nor what month it was? A. I cannot tell the time.

Q. Did you make any speeches at Plunket-street? A. No, sir.

Q. Was there any secretary there taking down notes? A. Not as I saw.

Q. Was there any chairman putting questions? A. There was a man at the opposite side of the table, near the grate, and he put down money upon the table, which he had collected—he said it was a subscription for powder.

Q. The next meeting was where? A. At Stoneybatter.

Q. Do you remember whom you saw there? A. Hart, Leary, Cooke and Walsh.

Q. These were all you recollect—Weldon was not there? A. No, sir.

Q. Then there was no person at Stoneybatter who was present at the communication with Weldon? A. No.

Q. Stoneybatter was the first place you heard any mention of the French? A. It was.

Q. Recollect yourself, because it is very material; did Weldon tell you that any part was to be taken by Cooke? A. He never mentioned his name.

Q. Nor by Hart? A. No.

Q. Nor by Walsh? A. No.

Q. That you are clear of? A. Yes, sir.

Q. Who was it that started any mention about the French? A. Hart.

Q. Did he address himself in the way of a speech to the chair? A. There was no person appointed in the place. But the young man was brought in to be sworn; he appeared shy at first and Hart told him the motives of becoming a Defender.

Q. It was addressed to the young man? A. It was, but we were all present by.

Q. Did any one else join in it? A. No.

Q. He said we might get arms and assist the French and no other person said anything upon the subject? A. No, sir.

Q. Then your evidence comes to this:—That the only mention made about the French was at Stoneybatter—that Hart said it to the young man and no one made any kind of reply. Who did you understand from Brady had told him of the meeting in Plunket-street? A. I was walking with him and he told me there was a meeting there, and asked to go there.

Q. Did he say who told him of it? A. No, sir.

Q. I suppose you are perfectly impressed with the enormous nature of the crime of making an attempt upon the person of his Majesty? A. At that time he said we all lived —

Q. I did not ask you as to that; but did you not conceive it to be a crime to make an attempt upon the life of the King? A. Not at that time.

Mr. CURRAN.—I am sorry there was such a time—go down, young man.

Q. (By the Jury.—Do you now think it an enormous crime? A. I certainly do.)

Oliver Carleton, Esq. sworn.—Examined by Mr. SAURIN.

Q. What is that paper in your hands? A. I had got a warrant from Alderman James against Brady, Kennedy, Walsh and Flood. The Alderman desired me to send for my officers—I did so, and dispatched them to different parts. I went myself with two of them to Kennedy's the glass-man in Steven-street, at half-past five in the morning —

Q. You were at that time in a public office? A. Yes. We knocked at the door some time: two boys came down at a back-door in Drury-lane: I asked them their names; they said Kennedy and Brady: I took them into custody. I had been desired to examine the fob of Kennedy's breeches, and I would find there the oath and the catechism: I did search the fob and found them both.

Q. Were these the papers (shewing them to the witness)? A. These are the papers.

Q. What was then done with Kennedy? A. I took him and Brady into custody and brought them to the castle guard.

Q. What became of Kennedy? A. I saw him in Newgate some time ago.

Cross-examined by Mr. M'NALLY.

Q. How long have you known Lawler? A. I do not know him at all.

Q. Have you ever heard anything of him? A. I never asked any person about him; nor ever heard anything about him.

Q. You know nothing of Weldon? A. No.

Q. (By the Court.)—Who informed you, that you would find these papers upon Kennedy? A. Alderman James, who desired me to be particular in searching Kennedy, for I would find them in his breeches pocket.

Q. (By the Jury.)—Kennedy is a boy? A. He is a very young man—so is Brady.

Q. What age may he be? A. I am a very bad judge of the age of a person.

Case rested for the Crown.

Mr. CURRAN.—My lords, and gentlemen of the jury, I am of counsel in one of those cases in which the humanity of our law is, very fortunately, joined with the authority and wisdom of the court in alliance with me for the purposes of legal protection. Gentlemen, I cannot however but regret, that that sort of laudable, and amiable anxiety for the public tranquillity, which glows warmest in the breasts of the best men, has perhaps induced Mr. Attorney-General to state some facts to the court and the jury, of which no evidence was attempted to be given. And I make the observation only for this purpose, to remind you gentlemen, that the statement of counsel is not evidence—to remind you, that you are to give a verdict, upon this solemn and momentous occasion, founded simply upon the evidence which has been given to you; for such is the oath you have

taken. Gentlemen, I make the observation, not only in order to call upon you to discharge any impressions, not supported by testimony, but to remind you also of another incontrovertible maxim, not only of the humane law of England, but of eternal justice upon which that is founded—that the more horrid and atrocious the nature of any crime charged upon any man is, the more clear and invincible should be the evidence upon which he is convicted. The charge here is a charge of the most enormous criminality, that the law of any country can know—no less than the atrocious and diabolical purpose of offering mortal and fatal violence to the person of the Sovereign, who ought to be sacred. The prisoner is charged with entertaining the guilty purpose of destroying all order, and all society, for the well-being of which the person of the King is held sacred. Therefore, gentlemen, I presume to tell you, that in proportion as the crime is atrocious and horrible, in the same proportion ought the evidence to convict, be clear and irresistible. Let me therefore endeavour to discharge the duty I owe to the unfortunate man at the bar, (for unfortunate I consider him whether he be convicted or acquitted,) by drawing your attention to a consideration of the facts charged, and comparing it with the evidence adduced to support it.

The charge, gentlemen, is of two kinds—two species of treason—founded upon the statute 25 Ed. III. One is, compassing the King's death. The other is a distinct treason—that of adhering to the King's enemies. In both cases, the criminality must be clearly established, under the words of the statute, by having the guilty man convicted of the offence by provable evidence of overt acts. Even in the case and it is the only one, where by law the imagination shall complete the crime, there that guilt must be proved, and can be provable only by outward acts, made use of by the criminal for the effectuation of his guilty purpose. The overt acts stated here are, that he associated with traitors unknown, with the design of assisting the French, at war with our government, and therefore a public enemy. 2dly, consulting with others for the purpose of assisting the French. 3dly, consulting with other traitors to subvert the government. 4thly, associating with Defenders to subvert the Protestant religion. 5thly, enlisting a person stated in the indictment to assist the French and administering an oath to him for that purpose. 6thly, enlisting him to adhere to the French. 7thly, corrupting Lawler to become a Defender. 8thly, enlisting him by administering an oath, for similar purposes. In order to warrant a verdict convicting the prisoner, there must be clear and convincing evidence of some one of these overt acts, as they are laid. The law requires that there should be stated upon record, such an act as in point of law will amount to an overt act of the treason charged, as matter of evidence, and the evidence adduced must correspond with the fact charged. The uniform rule which extends to every case applies to this, that whether the fact charged be sustained by evidence is for the conscience and the oath of the jury, according to the degree of credit they give to the testimony of it. In treason, the overt act must sustain the crime, and the evidence must go to support the overt act so stated. If this case were tried at the other side of the water, it does not strike me, that the very irrelevant evidence given by Mr. Carleton could have

supplied what the law requires; the concurring testimony of two witnesses. I cannot be considered, indeed I should be sorry, to put any sort of comparison between the person of Mr. Carleton and the first witness who was called upon the table. Gentlemen of the jury, you have an important province indeed—the life and death of a man to decide upon. But previous to that you must consider, what degree of credit ought to be given to a man under the circumstances of that witness produced against the prisoner. It does appear to me, that his evidence merits small consideration in point of credibility. But even if he were as deserving of belief as the witness that followed, and that his evidence were as credible as the other's was immaterial, I shall yet rely confidently, that every word if believed does leave the accusation unsupported. Gentlemen, I will not affront the idea which ought to be entertained of you, by warning you not to be led away by those phantoms which have been created by prejudice, and applied to adorn the idle tales drunk down by folly, and belched up by malignity. You are sensible that you are discharging the greatest duty that law and religion can repose in you, and I am satisfied you will discard your passions, and that your verdict will be founded, not upon passion or prejudice, but upon your oaths and upon justice. Consider what the evidence in point of fact is—Lawler was brought by Brady and Kennedy to Weldon, the prisoner, in Barrack-street; what Brady said to him before, if it had been of moment in itself, I do not conceive, can possibly be extended to him, who did not assent to the words and was not present when they were uttered. Lawler was carried to the prisoner at the bar to be sworn; and here give me leave to remind you, what was the evidence—to remind you that the expressions proved do not bear that illegal import which real or affected loyalty would attach to them, and therefore you will discharge all that cant of enthusiasm from your minds. I wish that I were so circumstanced as to be entitled to an answer, when I ask Mr. Attorney-General, what is the meaning of the word Defender? I wish I were at liberty to appeal to the sober understanding of any man for the meaning of that tremendous word. I am not entitled to put the question to the counsel or the court—but I am entitled to call upon the wise and grave consideration of the court to say, whether the zeal of public accusation has affixed any definite meaning to the word? I would be glad to know, whether that expression, which is annexed to the title of the highest magistrate, marking his highest obligation and styling him the DEFENDER of the religion of the country, in common parlance acquired any new combination, carrying with it a crime, when applied to any other man in the community? Let me warn you, therefore, against that sort of fallacious lexicography which forms new words, that undergoing the examination of political slander or intemperate zeal, are considered as having a known acceptation. What is the word? A word that should be discarded, when it is sought to affix to it another meaning than that which it bears in the cases where it is used. Let me remind you that a Defender, or any other term used to denote any confraternity, club, or society, like any other word, is arbitrary, but the meaning should be explicit. And therefore with regard to this trial, you are to reject the word as having no meaning, unless from the evidence you find,

it has in the mind of the party a definite explication; for observe that the witness such as he is—such as he was, with all his zeal for the furtherance of justice, which he was once ready to violate by the massacre of his fellow subjects—with all his anxiety for his Sovereign's safety, whom he was once ready to assassinate, he, I say, has not told you, that either Brady or Kennedy or any other person, what the principles were that denoted a Defender. But I will not rest the case of my client upon that ground: no, it would be a foolish kind of defence, because words might be used as a cloak and therefore might be colourably introduced. You, gentlemen, are then to consider what this oath, this nonsensical oath, which so far as it is intelligible is innocent, and so far as it is nonsense, can prove nothing, you are to consider, whether innocent and nonsensical as it may appear, it was yet a cover and a bond for treasonable association. It is not in my recollection, that any evidence was given, that the oath was conceived in artfully equivocal expressions, for forming, under the sanction of loyal language, a treasonable association. Is one of the parties laughing, evidence, that it was treasonable, or the bond of a criminal confederation? It is not. Is it treasonable to say, "that were the King's head off to-morrow, the allegiance to him would be at an end?" It is not. The expressions may bring a man into disrepute—to lead the mind of a jury into a suspicion of the morality of the man who used them—but nothing more. It may be asked why should there be anything insidious? Why but to cover a treasonable purpose are all these suspicious circumstances? It is not for me, nor is it the prisoner's duty to account for them in defending himself against this charge; because circumstances are not to render innocence doubtful, but it is full proof establishing the guilt and the treason indubitably which the law requires. Therefore I submit that even if the evidence could be believed, it does not support the overt acts—was there a word of violating the person of the King? Any affected misrepresentation or any abuse of government? Have you heard a word stated of the King, not being an amiable King? Any words contumeliously uttered respecting his person—disrespectful of his government—expressive of any public grievance to be removed, or good to be attained? Not a word of such a subject—nothing of the kind is proved by this solitary witness in all his accuracy of detail.

Was there any proposition of assisting the French in case they invaded this kingdom? To support that charge a nonsensical catechism is produced. There it is asked, "Where did the cock crow when all the world heard him?" What kind of old women's stories are these to make an impression upon your minds? Well, but what does that mean? Why, can you be at a loss? It means to—kill the King! Look at the record—it charges the persons with compassing the King's death, and the question about the crowing of a cock is the evidence against them.

Gentlemen, you all know, for you are not of ordinary description, that the statute of Ed. III. was made to reduce vague and wandering treasons—to abolish the doctrine of constructive treason and to mark out some limited boundaries, clear to a court and jury. If a man has been guilty of disrespect in point of expression to the government

or the crown, the law has ascertained his guilt and denounced the punishment. But all the dreadful uncertainty intended to be guarded against by the statute, and which before the passing of the statute had prevailed in case of treason, and which had shed upon the scaffold some of the best blood in England would again run in upon us, if a man were to suffer an ignominious death under such circumstances as the present. If equivocal expressions should be taken as decisive proof, or if dubious words were to receive a meaning from the zeal of a witness, or the heat, passion or prejudice of a jury. The true rule by which to ascertain what evidence should be deemed sufficient against a prisoner is, that no man should be convicted of any crime except upon the evidence of a man subject to an indictment for perjury, where the evidence is such as if false, the falsehood of it may be so proved as to convict the witness of perjury. But what indictment could be supported for a laugh, a shrug, or a wink? Was there any conversation about killing the King? No: but here was a laugh—there was an oath to which we were sworn—and then—there was a wink; by which I understood, we were swearing one thing and meant another. Why, gentlemen, there can be no safety to the honour, the property or the life of man, in a country where such evidence as this shall be deemed sufficient to convict a prisoner. There is nothing necessary to sweep a man from society, but to find a miscreant of sufficient enormity, and the unfortunate accused is drifted down the torrent of the credulity of a well-intending jury. See how material this is, Weldon was present at only one conversation with the witness. It is not pretended by the counsel for the crown, that the guilt as to any personal evidence against Weldon does not stand upon the first conversation. Was there a word upon that conversation of adhering to the King's enemies? It was stated in the case, and certainly made a strong impression, that Lawler was enlisted in order to assist the French. I heard no such evidence given. The signs of what he called Defenders were communicated to him; the oath which he took was read, and he was told there would be a subsequent meeting of which the witness should receive notice from Brady.

Gentlemen, before I quit that meeting at Barrack-street, let me put this soberly to you. What is the evidence upon which the court can leave it to you to determine, that there is equivocation in the oath? It must be in this way: you are to consider words in the sense in which they are spoken, and in writings words are to be taken in their common meaning. Words have sometimes a technical sense for the purposes of certainty: they may also be made the signs of arbitrary ideas, and therefore I admit a treasonable meaning may be attached to words which, in their ordinary signification, are innocent. But where is the evidence, or what has the witness said to make you believe, that these words in the oath were used in any other than in the common, ordinary acceptation? Not a word as I have heard. Weldon can be affected only personally, either, first, upon acts by himself, or by other acts brought home to him from the general circumstances of the case. I am considering it in that two-fold way, and I submit, that if it stood upon the evidence respecting the conduct of the prisoner at Barrack-street alone, there could not be a doubt as to his acquittal. It is necessary,

therefore, that I should take some further notice of the subsequent part of the evidence. The witness stated, that Weldon informed him, that there would be another meeting of which he, the witness, should have notice. He met Brady and Kennedy, they told him there was a meeting at Plunket-street; and here give me leave to remind the court, that there is no evidence, that there was any guilty purpose in agitation to be matured at any future meeting—no proposal of any criminal design. There ought to be evidence to show a connection between the prisoner, and the subsequent meeting as held under his authority. It is of great moment to recollect, that before any meeting Weldon had left town, and, in the mention of any meeting to be held, let it be remembered he did not state any particular subject, as comprehending the object of the meeting. What happened? There certainly was a meeting at Plunket-street; but there was not a word of assisting the French—of subverting the religion—of massacring the Protestants—of any criminal design whatever. There was not any consultation upon any such design. I make this distinction, and rely upon it, that where consultations are overt acts of this or that species of treason, it must be a consultation by the members composing that meeting; because it would be the most ridiculous nonsense, that a conversation addressed from one individual to another, not applied to the meeting, should be called a consultation: but, in truth, there is no evidence of anything respecting the French, except in Stoneybatter. There, for the first time, the witness says he heard any mention of the French. Here, gentlemen of the jury, let me beseech you to consider what the force of the evidence is. Supposing that what one man said there to another about assisting the French, to have been criminal, shall Weldon, who was then, for a week, a hundred miles from the scene, be criminally affected by what was criminally done at Stoneybatter? It is not only that he shall be criminally affected by what was criminally done, but even to the shedding of his blood, shall he be affected by what any individual said, who casually attended that meeting! Have you any feeling of the precipice to which you are hurried, when called upon to extend this evidence in such a manner?—without any one person being present with whom the prisoner had any previous confederation! You will be very cautious indeed, how you establish such a precedent. How did Weldon connect himself with any other meeting? Why, he said, there will be another meeting, you shall have notice—it would be going a great way to affect him in consequence of that. I lay down the law with confidence, and I say there is no doctrine in it, so well ascertained and established, as that a man is to be criminally affected only by his own acts—the man to be charged, must be charged with overt acts of his own. There is no law—no security—no reason in that country where a man can be mowed down by foolishly crediting the evidence, not of acts of his own, but of the acts of others, constructively applied to him, who did not attend the meeting, nor was ever aware of it. If a man was to be exposed to the penalties of treason hatched and perpetrated in his absence, every member of society becomes liable to be cut off by mere suspicion. I say, no man could go to his bed with an expectation of sleeping in it again if he were liable to be called upon

to answer a charge of suspicious words, spoken when he was an hundred miles off, by miscreants with whom he had no connection. Good, God! gentlemen, only take asunder the evidence upon which you are called upon to take away the life of this man—"You, Weldon, are chargeable, and shall answer with your blood, for what was done at Stoneybatter."—"Why, that is very hard, gentlemen, for I was not there—I was an hundred miles off."—"Yes, but you were there in contemplation of law, consulting about the abominable crimes of compassing the King's death, and adhering to his enemies."—"How, gentlemen, could I be there—I knew not that there was any such meeting—I was not present at it."—"Aye, but you were there in contemplation of law, because you told Lawler, that Brady would inform him, when there would be a meeting in Thomas-street, and because you told him so, you shall be answerable with your life for what is done at any meeting, at any distance of time, at any place, by strangers whom you have never seen or heard of. You have written your name, you have indorsed the treasonable purpose, and through whatever number of persons it may pass, the growing interest of your crime is accumulating against you, and you must pay it with your blood, when it is demanded of you." Gentlemen, before we shall have learned to shed blood in sport—while death and slaughter are yet not matter of pastime among us, let us consider maturely before we establish a rule of justice of this kind. Terrible rules, as we have seen them to be, when weighed upon the day of retribution. I confess it is new to me. Whatever doctrines I have learned, I have endeavoured to learn them from the good sense, and humanity of the English law;—I have been taught, that no man's life shall be sacrificed to the ingenuity of a scholium, and that even he, who has heedlessly dropped the seed of guilt, should not answer for it with his blood, when it has grown under the culture of other hands from folly to crime and from crime to treason; he shall not be called upon to answer for the wicked faults of casual and accidental folly. No; gentlemen, I say it with confidence, the act which makes a man guilty must be his own; or if it be by participation, it must be by actual participation, not by construction; a construction which leads to an endless confounding of persons and things. If I do an act myself, I am answerable for it: If I do it by another I am answerable also. If I strike the blow, I am answerable: If I send an assassin and he strikes the blow it is still my act, and I ought to be charged with the criminality of it. But if I go into a society of men, into a club, or play-house, and a crime be there committed, there is no principle of law which shall bring home to me the guilty conduct of those men which they may pursue at any distance of time. What protection can a miserable man have from my discharging perhaps the ineffectual office of my duty to him, if the rule laid down, that every word he said, or was said by a man with whom he ever had a conversation, shall affect him at any distance of time? Consider what will be the consequence of establishing the precedent, that a man shall always be responsible for the act of the society to which he has once belonged. Suppose a man heedlessly brought into an association where criminal purposes are going forward—suppose there was what has been stated, a society of men calling themselves Defenders and answering in fact to the very

singular picture drawn of them. Will you give it abroad, that if a man once belongs to a criminal confederacy, his case is desperate—his retreat is cut off—that every man once present at a meeting to subvert the government shall be answerable for every thing done at any distance of time by this flagitious association. What is the law in this respect? As in the association there is a peril, so in the moment of retreat, there is safety. What could this man have done? He quitted the city—he went to another part of the kingdom, when the treasonable acts were committed; yes, but he was virtually among them. What constitutes a man virtually present, when he is physically absent? What is the principle of law by which he shall be tried? It can alone be tried by that, by which the mandate or authority of any man is brought home to him. By previously suggesting the crime, by which he becomes an accessory before the fact, and therefore a principal in treason; for by suggesting the time he proves the concurrence of his will with that of the party committing the crime. This is a maxim of law, that which in ordinary felonies makes a man an accessory in treason will constitute him a principal, because in treason there are no accessaries. Suppose a meeting held for one purpose, and a totally distinct crime is committed, are those who were at the first meeting accessaries? Certainly not; because they must be procurers of the fact done. To make a man a principal, he must be *quodammodo* aiding and assisting—that is not proved. What then is the accessorial guilt? Did the prisoner write to the others? Does he appear to be the leader of any fraternity—the conductor of any treasonable meeting? No such thing. I say when he quitted Dublin he had no intention of giving aid, or continuance to any meeting; the connection between him and the societies ceased, and there is no evidence that he had any knowledge of any of their subsequent acts. Unless there be positive evidence against him, you ought to consider him out of the sphere of any association. But still you make him answerable for what was done. If you do that, you establish a rule unknown to the sense or humanity of the law; making him answerable for what was done, not by himself but by other persons.

Gentlemen, I feel that counsel, anxious as they ought to be, may be led further than they intend;—in point of time I have pressed further than I foresaw upon the patience of the jury and the court. I say the object of this part of the trial is whether the guilt of anything which happened in that society be in point of law brought home to the prisoner? I have endeavoured to submit that the charge ought to be clear and the evidence explicit, and that though the meetings at which Lawler attended were guilty, yet the prisoner being absent, was not affected by their criminality. Give me leave now, with deference, to consider the case in another point of view. I say then, from what has appeared in evidence, the meetings themselves cannot in the estimation of the law be guilty. If these meetings are not provably guilty of treason, there can be no retroacted guilt upon the prisoner, even if the communication between them and him were proved. If there be no direct and original guilt—if they do not that, which if done by him, would amount to an overt act of treason, *a fortiori*, it cannot extend to him. Therefore let me suppose, that

the prisoner was at the time present at these meetings. Be pleased to examine this, whether if he were, the evidence given would amount to the proof required. I conceive that nothing can be more clear than the distinction between mere casual, indiscreet language, and language conveying a deliberated and debated purpose. To give evidence of overt acts, the evidence must be clear and direct. How is Hensey's case? * A species of evidence was adduced which it was impossible for any man to deny : actual proof of correspondence found in his own writing and possession. How was it in Lord Preston's case? † Evidence equally clear of a purpose acted upon ; going to another country for that treasonable purpose. In every case of which we read memorials in the law, the act is such, that no man could say it is not an overt act of the means used by the party in effectuation of his guilty intent. But I said, that a deliberate purpose expressed and acted upon is different from a casual, indiscreet expression. Suppose now, that the meeting were all indicted for compassing the King's death, and that the overt act charged is, that they consulted about giving aid to the King's enemies, actually at war. The guilt of all is the guilt of each, there is no distinction between them. If that meeting held that consultation, they are all guilty of that species of high treason. But if the evidence were, that at that meeting which consisted of as many as are now here, one individual turned about to another, and said "we must get arms to assist the French, when they come here." Would any reasonable man say, that was a consultation to adhere to the King's enemies?—a mere casual expression, not answered by any one—not addressed to the body. Can it be sustained for a moment in a court of justice, that it was a consultation to effect the death of the King, or adhere to his enemies? No, gentlemen, this is not matter of any deep or profound learning—it is familiar to the plainest understanding. The foolish language of one servant in your hall is not evidence to affect all the other servants in your house: it is not the guilt of the rest. I am aware, it may be the guilt of the rest; it may become such. But I rely upon this; I address it to you with the confidence that my own conviction inspires; that your lordships will state to the jury, that a consultation upon a subject is a reciprocation of sentiment upon the same subject. Every man understands the meaning of a consultation: there is no servant that cannot understand it. If a man said to another, "we will conspire to kill the King," no lacquey could mistake it. But what is a consultation? Why such as a child could not mistake if it passed before him. One saying to another, "we are here together, private friends—we are at war—the French may land, and if they do, we will assist them." To make that a consultation there must be an assent to the same thought; upon that assent, the guilt of the consultation is founded. Is that proved by a casual expression of one man, without the man to whom it was directed making any answer, and when in fact every other man but the person using the expression was attending for another purpose? But if there be any force in what I have said as applied to any man attending there, how much more forcible will it appear, when applied to a man, who was an

* 19 Howell's St. Tr. 1341. † 12 Howell's St. Tr. 646.

hundred miles distant from the place of meeting. If the law be clear, that there is no treason in hearing treasonable designs and not consenting thereto, though it be another offence, unless he goes there knowing beforehand, the meeting was to be. Here, gentlemen, see how careful the law is, and how far it is from being unprovided as to different cases of this kind. If a man goes to a meeting, knowing that the object is to hatch a crime, he shall be joined in the guilt. If he goes there and takes a part, without knowing previously, he is involved; though that has been doubted. Foster says, "this is proper to be left to the jury, though a party do, or say nothing as to the consultation." If, for instance, a man knowing of a design to imprison the King, and goes to a meeting to consult for that purpose, his going there is an obvious proof of his assent and encouragement. This is the law as laid down by one of the most enlightened writers in any science. Compare that doctrine with what Mr. Attorney-General wishes to inculcate, when he seeks to convict the prisoner. There was a meeting in Barrack-street, and it was treason, because they laughed. As Sancho said, they all talked of me, because they laughed. But then there is a catechism. Aye, what say you to that? The cock crew in France—what say you to that? Why I say it might be foolish, it might be indecent to talk in this manner; but what is the charge? That he consulted to kill the King. Where was it he did that? At Cork! But did he not assist? No; he was not there. But he did assist, because he communicated signs, and thus you collect the guilt of the party, as the coroner upon an inquest of murder, who thought a man standing by was guilty. Why? Because three drops of blood fell from his nose. This was thought to be invincible proof of his guilt. It reminds me also of an old woman who undertook to prove that a ghost had appeared. "How do you know there was a ghost in the room?" "Oh! I'll prove to you, there must have been a ghost—for the very moment I went in, I fainted flat on the floor!" So says Mr. Attorney-General. "Oh, I'll convince you, gentlemen, he designed to kill the King, *for he laughed.*" Weldon was chargeable with all the guilt of the meeting—he laughed, when the paper was read and said, when the King's head was off, there was an end of the allegiance. In answer to that, I state the humane good sense of the law, that in the case of the life of a traitor; it is tender in proportion to the abomination of the crime—for the law of England, while it suspended the sword of justice over the head of the guilty man, threw its protection around the innocent, to save his loyalty from the danger of such evidence:—it did more—it threw its protection around him whose innocence might be doubted, but who was not proved to be guilty. The mild and lenient policy of the law discharges a man from the necessity of proving his innocence, because otherwise it would look as if the jury were impannelled to condemn upon accusation without evidence in support of it, but merely because he did not prove himself innocent. Therefore, gentlemen, I come round again to state what the law is. In order to make a general assembling and consultation evidence of overt acts, there must be that assembling and the guilt must be marked by that consultation in order to charge any man, who was present and not say anything concurring with the guilt of that con-

sultation. It is necessary that he should have notice that the guilty purpose was to be debated upon:—that the meeting was convened for that purpose. But let me recal your attention to this, and you will feel it bearing strongly upon that case. The silence of a man at such a meeting is not criminal to the degree here charged. Then suppose his disclaimer necessary—suppose the law considered every man as abetting what he did not disavow, remember that the wretch now sought to be affected by his silence at a meeting, was one hundred miles distant from it. There might have been a purpose from which his soul had recoiled. Is this then evidence upon which to convict the prisoner? There is no statement of any particular purpose—no summons to confer upon any particular purpose—no authority given to any meeting by a deputy named—and let me remind you, that at the last meeting, if there were the gossipings and communications you have heard, there was not any one man present who attended the first meeting, nor is there any evidence to shew, that the prisoner had ever spoken to any one man who attended the last meeting, upon any occasion, and yet the monstrous absurdity contended for is, that although Weldon proposed no subject for discussion—although he proposed no meeting—although he did not know that any purpose was to be carried into effect, because he was then one hundred miles off, he is still to suffer for the foolish babble of one individual to another. You are to put all proceedings together and out of the tissue of this talk, hearsay and conjecture, you are to collect the materials of a verdict, by which you directly swear, that the man is guilty of compassing the King's death. But suppose a man were to suggest a treasonable meeting—that the meeting takes place and he does not go—the first proposal may amount to evidence of treason if it went far enough, and amounted to an incitement. But suppose the meeting held be a distinct one from that which was suggested, and the party does not attend, it appears to me, that the act of that meeting cannot be considered as his overt act. The previous incitement must be clearly established by evidence, and I rely upon it, that the subsequent acts of that meeting, to which I am supposing he did not go, particularly if it be a meeting at which many others were present who were not at the first, I rely upon it, I say, that no declaration of any man (and more decidedly if it be by a man not privy to the original declaration,) can be evidence upon which a jury can attach guilt to the party. It is nothing more than misfeasance, which is certainly criminal, but not to the extent of this charge. To affect any man by subsequent debate, it must be with notice of the purpose, and if the meeting be dictated by himself it is only in that point he can be guilty; because if you propose a meeting for one purpose, you shall not be affected by any other—no matter what the meeting is—however treasonable, or bad; unless you knew before for what purpose they assembled you cannot be guilty virtually by what they have done. Gentlemen, I do not see that anything further occurs to me upon the law of the case, that I have not endeavoured in some way to submit to you. Perhaps I have been going back somewhat irregularly. Gentlemen, there remains only one, and that a very narrow subject of observation. I said that the evidence upon which the life, and the fame and the property of a man should be decided

and extinguished, ought to be of itself, evidence of a most cogent and impressive nature. Gentlemen, does it appear to you that the witness whom you saw upon the table comes under that description. Has he sworn truly? If he has—what has he told you? As soon as he discovered the extent of the guilt he quitted the fraternity. Do you believe that? Hart told him that ALL the Protestants were to be massacred. "I did not like," said he, "the notion of massacring ALL." Here is the picture he draws of himself—he an accomplice in the guilt. I did not ask him, "Have you been promised a pardon?" I did not ask him "Are you coming to swear by the acre?"—But I appeal to the picture he drew of himself upon the table. What worked his contrition? Is it the massacre of one wretch? He was unappalled at the idea of dipping his hands, and lapping the blood of *part* of the Protestant body—it was only heaps of festering dead, that nauseated his appetite and worked his repentance and conversion. Is your verdict to be founded upon the unsupported evidence of a wretch of that kind. His stomach stood a partial massacre—it was only an universal deluge of blood that made him a convert to humanity! And he is now, the honest, disinterested and *loyal* witness in a court of justice. What said he further? "As soon as I found from Hart their schemes, I went to Mr. Cowan." You saw, gentlemen, that he felt my motive in asking the question. "You abandoned them as soon as you found their criminality."—Because had he answered otherwise he would have destroyed his credit; but as it is he has thrown his credit, and the foundation of it overboard. If Lawler be innocent, Weldon must be so. He saw that and therefore he said, he thought it no crime to kill the King. Therefore, gentlemen, my conscience told me, that if he felt no remorse at plunging a dagger into the heart of his King, he would feel no trembling hesitation at plunging a dagger into the breast of an individual subject by perjured testimony. Those workings of the heart which agitate the feelings at the untimely fate of a fellow creature touch not him, and he could behold with delight, the perishing of that man who had a knowledge of *his* guilt. He has no compunction and he betrays no reluctance at drinking deep in the torrent of human blood, provided it leaves a remnant of the class. What stipulation can you make between a wretch of that kind and the secret obligation of an oath? You are to swear upon his oath—a verdict is not to be founded upon your own loyalty—not upon what you have seen or heard spoken disrespectfully of the government or the King. Your honest, pure, and constitutional verdict can be founded only upon that sympathy that you feel between your own hearts and the credibility of the witness. It is a question for you. Will you hazard that oath upon the conscience of such a man? A man influenced by hope and agitated with fear—anxious for life and afraid to die, that you may safely say, "we have heard a witness, he stated facts which we could not believe; he is a wretch for he thought it no crime to murder his King; and a partial massacre appeared to him to be meritorious!" Is it upon the testimony of that nefarious miscreant—the ready traitor—the prompt murderer—I retract not the expression, if I did, it would be to put in its place a word of more emphatic and combined reprobation; is it upon that evidence, I say you will pronounce a

verdict, establishing the most aggravated degree of criminality known to our law upon the person of that man, supposed by the law to be innocent until his guilt be proved? I know not whether the man be a good subject or a bad one: it is not necessary for me to know nor for you to enquire; but I exhort you, finally to remember, that in Great Britain, so anxious has the law been to guard against the perfidiousness of such men, that no less than two concurrent witnesses are necessary there in cases of treason. I call not upon you to adopt that law; but to shew you the principle, that there should be strong evidence satisfying the mind of a jury. I commit the decision of this case to your consciences, not to your humanity—I commit it to your determination upon the sound principles of justice and law.

After Mr. Curran had sat down, he rose again, and said he had closed without stating any evidence, from a conviction that it would be unnecessary. It is desired to produce some evidence which I will not oppose in a case of life. There is evidence to shew that Lawler is not credible.

Samuel Galland was then called and sworn on the part of the prisoner, but was not examined.

James Reynolds, sworn.—Examined by Mr. M'NALLY.

Q. Do you know the prisoner? A. I have known him for seventeen years.

Q. What has been his general character? A. I never heard of any thing improper, before this trial; he worked as a breeches-maker and was an industrious man.

Thomas O'Neil, sworn.—Examined by Mr. M'NALLY.

Q. Do you know the prisoner? A. I do.

Q. How long have you known him? A. I have known him twenty years.

Q. What has been his general character? A. A very good one—he was an honest, laborious man.

Mr. M'NALLY then addressed the jury in a short speech for the prisoner, apologising for his brevity by stating that he was much indisposed and that any exertion upon his part was rendered less necessary by the very splendid defence by Mr. Curran.

Mr. PRIME-SERJEANT in reply, spoke to the evidence very fully.

Mr. Justice FINUCANE.—Gentlemen of the jury. In this case James Weldon stands indicted of two species of treason, declared to be such, by the stat. 25, Ed. III. One of these is for imagining and compassing the death of the King. And the other is for adhering to the King's enemies. Now, gentlemen, as to first of these charges, that of compassing the King's death, such is the anxious care with which the life of the King is guarded by our law, that the offence is not confined to acts, or attempts directly against the life of the King, as by laying in wait to assassinate, or by murdering, but it extends to every thing deliberately done, by which the life of the King might be endangered. Thus, it has been always held, and is now well established, that all attempts to dethrone or imprison the King are overt acts of compassing his death; for all experience, and all history

shew, that the necessary consequence of such dethronement or imprisonment has been the death of the King. So, also adhering to the King's enemies, or encouraging them to invade the kingdom, are overt acts of imagining his death; and that I take it, does fairly follow to the conviction of every man, when he considers that the ultimate object of the King's public enemies is his death and destruction. The King is the first soldier of the state, and the sword of the enemy is as much levelled at his life, as that of any soldier in his army. And therefore every act of adhering, countenance, or assistance to the King's enemies, does necessarily fall under that branch of the statute, which makes the offence of compassing and imagining the death of the King. Therefore, gentlemen, although these two offences are made distinct by the statute, compassing his death and adhering to his enemies, yet every overt act, which proves the person adhering to the King's enemies, is also an overt act of compassing the death of the King. By overt act, nothing more is meant, than an act done by the party to effect his treasonable intent. It is called an overt act, that is, an open act, the means used by the party to accomplish his treason, that is to say, to put the King to death, or adhere to the King's enemies. No man is answerable for the tacit imagination of his heart, unless he does something to effect his traitorous intent. To God alone, the searcher of all hearts, is he answerable for his thoughts and intentions. But human tribunals cannot take cognizance of thoughts, except so far as they are manifested by acts. Therefore in every indictment of treason, the overt acts, the means used to effect the purpose, must be set forth, because it is against them, the accused is to make his defence. But though the indictment should, as it generally does, state several overt acts, as means used by the party to effect his purpose; yet, if there be any one applicable to the treason charged, it is sufficient. Now, gentlemen, in the present indictment, the overt acts of both species of treason are one and the same; and from what I before mentioned, they may be so, as every act of adhering to the King's enemies, is an overt act of compassing the King's death. The overt acts in this indictment are these: First, after reciting that a war is depending between the King and the persons exercising the powers of government in France, (and here I must observe, that although no proof be given of a war existing between the King and the persons exercising the powers of government in France, yet the notoriety of the fact is sufficient evidence of it) the indictment, I say, recites the war, and then charges that the prisoner did unite with false traitors, called Defenders, and become one of a party to aid the French, in case they should invade this kingdom. This is stated as the manner in which he intended to carry into effect his traitorous purpose. Secondly, that he did consult with other traitors unknown, in the joining and assisting with the French. Thirdly, that he did unite with traitors unknown, and become one of a party called Defenders, united to subvert the government as by law established. But, gentlemen, this overt act being thus laid, not stating that there was any plan formed to effect it by force, we are of opinion, that this overt act does not fall within either species of treason; therefore you are not to apply your consideration to that overt act. The fourth, is to the same purport, and

you will also put it out of your consideration, that he did unite with others unknown to subvert the Protestant religion, and consult about the means, &c. The court are of opinion, that that does not form any overt act of compassing the Kings death, or adhering to his enemies. The fifth is, that the prisoner did, with other traitors unknown, in order to enlist William Lawler to be aiding and assisting the French, in case they should invade this kingdom, administer an unlawful oath. I will not read this to you now, gentlemen, because, when I state the evidence, I shall lay it before you in its proper place. The sixth is, that in order to procure and enlist William Lawler to aid the French, he did administer and instruct him to repeat an oath, declaration, or catechism, which I will also state by-and-by. The seventh overt act relates to a conspiracy to subvert the government, and not being laid to be intended by force, you will throw it out of your consideration. The eighth is, that to procure William Lawler, to assist the French, he administered an oath to him. These gentlemen, are the overt acts laid in the indictment, and in my apprehension, those, which are material for your consideration, may be classed under two heads: first, that he did unite with Defenders, and meet and consult with them, for the purpose of joining and assisting the French in case they should invade this kingdom. Secondly, that he did administer a certain oath and engagement to Lawler, to enlist, bind, and engage him to aid and assist the French, in case they should invade this kingdom. These two species of overt acts, are clear overt acts of adhering to the King's enemies, which is one of the treasons; so that if this indictment did not charge the treason of compassing and imagining the death of the King, and was confined solely to the charge of adhering to his enemies, that species of treason, if proved, will be clearly supported. Therefore, gentlemen, if it should appear, beyond all doubt, that these acts charged were done by the prisoner, or any one of them, then the prisoner is clearly guilty of adhering to the King's enemies, and also guilty of the other species, not directly, but by consequence. But unless you shall be perfectly satisfied, that they, or some of them were done, and his object was to assist the French, whatever other objects he had, you must acquit him of the offence charged. It will be now your duty, to consider the evidence most minutely: for this purpose, I will state the evidence which has been given in this case. The first witness for the crown was William Lawler; he mentioned, &c. [Here his lordship recapitulated the evidence with the utmost accuracy and precision, which being detailed very amply already, it is thought unnecessary to repeat. His lordship also read the papers, as stated in the indictment and proved, and then observed:] If you, gentlemen, are satisfied that this was an engagement to bind this man to aid the National Convention of France, it is a clear overt act of adhering to the King's enemies; because it is procuring another person to assist the enemies of the King, if you shall be of opinion, that the words National Convention mean the National Convention of France, and if you believe that it was put to this man. Another object of the paper is to destroy all —gs. If you shall be of opinion, that the blank is to be filled up with the word "King," it goes to substantiate the other species of treason in the indictment, because our King is included in the number,

and every act done to dethrone the King is comprehended in that species of treason of compassing his death. Then the other paper, to which the witness says he was sworn, together with the engagement, states that the person taking it is "to be true and faithful to King George III., whilst I live under the same government." These words are deserving of your consideration, because it is a qualification of the engagement, only whilst he lives under the same government, and how far other parts also qualify it, and make it pleasing and agreeable to others, is also for your consideration. Now, to be sure, if this oath were taken alone and by itself, there is nothing in the terms of it that could tend in any degree to support the overt acts charged in the indictment. But connecting it with the test taken at the same time, it deserves a very different consideration; and it will be for you, gentlemen, to consider how far one throws light upon the other. If the object of them be to bind this man to the National Convention, to dethrone all Kings, there can be no doubt that they support the treason charged in the indictment. After the oath was taken, the witness mentioned to you that Brady asked the prisoner if he knew any person who was to head them when they rose; that he answered there was one in the North. There is no overt act of a rising, or a conspiracy to rise; but if you believe that this rising was to aid the purposes of the society and to aid the French, it goes to support the overt acts. [Here his lordship stated remainder of the evidence, and that which was given on the part of the prisoner.] Here, gentlemen, the evidence closed. It would add materially to the weight of it, if Alderman James showed how he acquired intelligence of these papers being upon the person of Kennedy. If Lawler told it to him, or to any other person, it would add to his testimony, because connecting it with his testimony it would fortify what he said upon his direct testimony, that he saw them with Kennedy. But consider whether it is possible the information could have come from any other quarter. However, at the same time, you are also to consider whether it might not be an after thought. You are to determine, from the whole testimony of Lawler, and the credit you give to him.

Then it is asked, what is the word "Defender." There is nothing criminal in the word itself,—it is a name assumed by a set of persons. But the question is, what are the purposes and designs of these people? Of that you are the proper judges. If their designs and intentions were to adhere to the French, and to support them, the charge of adhering to the King's enemies is supported. If their designs were not such, the indictment is not supported. But considering the oath and the test together, supposing them administered, as sworn by Lawler, they shew very strongly what their designs were. That they were designed to adhere to the National Convention of France, if you believe those words mean the Convention of France,—and part is to dethrone all Kings, if you believe that the blank is to be filled up; that shews the design of the Defenders, and the witness, if believed, shews the design of this man, in administering it. What were their designs further appears from what Hart declared aloud, at Stoneybatter; for he declared aloud, that they were to get arms to assist the French.

So that there he declared what the object was. The oath and test declares it also, if you believe the evidence of Lawler.

But it is objected, that the acts for which a man is to answer, must be his own, and that the prisoner was not present at those declarations. But here are his own acts, if you believe the witness, for he is charged with administering this oath and test, an engagement to assist the National Convention, and to dethrone all Kings, if you believe these expressions, and the blank is to be so applied. Whatever the designs of the papers were, they are declared by the prisoner, to be designs of Defenders, and to be his own principles and designs. So that if it appears from his own acts, it is brought home to himself, and the declaration of the prisoner agrees with the declaration of Hart. If they do, Hart is a Defender, and explains what the object of the test is, namely, to raise arms for the French. But this is said, not to be a conspiracy, unless it was a consultation or general talk by a meeting. Why, certainly it may, or may not affect a person present, according to the circumstances of the case, of which you are the proper judges. But here it is sworn, if you believe the evidence, that Hart spoke aloud in the meeting, and desired those present, to go out for arms. That was a communication with the whole company,—to seize arms to enable them to be more assisting to the French. This is the explanation which Hart put upon it himself, in the hearing of the company, and assented to by the company, for they go away to get arms. Then he tells you, that some of the company remained, and those who went away not returning immediately, such as remained were sworn in the manner he described, that they would attend on the Monday following, with arms, to go and seize arms. That is an act done by Hart not to an individual, but addressed to such of the body as remained, and was assented to by them all. But, gentlemen, I only mention this, as obviating a difficulty thrown out by the counsel. But the whole is for your consideration, and I cannot but observe, that all depends, upon the testimony of Lawler. Certainly one single witness is competent to prove the crime of high treason, although it is otherwise in England: but we must go according to the law of this country, by which one witness is competent to prove the fact. But I say the whole depends upon the testimony of Lawler, and before you find a verdict upon his testimony, you must be satisfied with the truth of it. It has been stated, and no doubt the fact is so, that he is a witness subject to great objections. By his own confession, he is an accomplice in the treason. By his own confession, at one time he would not scruple to attempt the life of the King. At present, he is of a different way of thinking. Also by his own confession, he did not shudder at the idea of shedding Protestant blood, but that he stopped at the idea of massacring all. These are certainly strong objections to impeach the character of the witness. This man is a competent witness, and so far a credible one, because if he were not credible, it would not be of any utility to examine him. You, gentlemen, have heard his story, and you have seen the manner in which he told it to you; that is matter for you to consider, and to balance against the objections urged to impeach his character. There is no attempt made to discredit the man by producing evidence

against him. It has been said, that there has been no attempt by the prisoner to shew, he was not, at the time, in Barrack-street, where the oath was administered, that fact being capable of proof, and in that respect, to disprove what was said by Lawler. But that receives this answer, and a very full one in my opinion, that no particular time is stated, and therefore he could not be prepared with the proof which has been mentioned. Witnesses have been examined to the prisoner's character, but such evidence is of little weight in this case.

Mr. Justice CHAMBERLAIN, Mr. Baron GEORGE, and Mr. Judge FINUCANE addressed some observations to the jury, who then retired for about twenty minutes. When they came into court, the Clerk of the Crown addressed them.

CLERK OF THE CROWN.—How say ye, gentlemen of the jury, have ye agreed to your verdict?

JURY.—We have.

CLERK OF THE CROWN.—Who shall say for you?

JURY.—Our Foreman.

CLERK OF THE CROWN.—Gaoler, make a bar, set James Weldon forward—How say you, gentlemen of the jury, is James Weldon guilty of the treason whereof he stands indicted or not?

FOREMAN.—GUILTY.

The prisoner was thereupon brought back to Newgate, and the court adjourned to next day.

THE PROCEEDINGS
ON THE
TRIAL
OF
MICHAEL MAGUIRE,
AND
JOHN LEARY.

WEDNESDAY, December 23, 1795.

Brady, Kennedy and Hart were this day brought up and being severally asked, whether they were ready for their trials, answered they were not, and an affidavit was sworn by Kennedy for the purpose of postponing their trials.

Mr. McNALLY.—My lords, I am humbly to move your lordships to postpone the trials of these prisoners upon the affidavit, which has been just sworn by Kennedy, on the part of himself and the other two prisoners. The affidavit states that John Le Blanc, late of this city, but now of Belfast, is a material witness for the prisoners, without the benefit of whose testimony, they cannot with safety go to trial: that due diligence would have been used to procure his attendance, but that they did not know until after the trial of James Weldon yesterday, that Le Blanc's testimony would be material. The affidavit also states that this application is not made for the purpose of delay.

Mr. ATTORNEY-GENERAL.—My lords, although I could shew, that the affidavit is not sufficient to induce the court to put off the trial, yet I feel that it is my duty, unless circumstances made it absolutely necessary for the public safety to bring on the trials, to shew the prisoners every indulgence. Therefore, my lords, I shall not resist this application, and when I do this, I yield a great deal, because from information which I have received since yesterday, I should be able to lay before the court evidence to support that which was given on the part of the Crown. But at present, I yield to this application.

The trials of these three men were accordingly postponed.

Mr. ATTORNEY-GENERAL.—My lords, from this alteration in the arrangement, which I made for this day, I am not prepared to go on with any other trial.

And thereupon the court adjourned.

COUNTY COURT,

THURSDAY, December 24.

Michael Maguire was indicted for high treason in compassing the King's death and adhering to his enemies; in support of which a number of overt acts were stated, the principal of which was, that in order to enlist Thomas Roden, a fifer in the 104th regiment, to join with, and become a Defender to aid and assist the persons exercising the powers of government in France, he did keep and detain him from his regiment for the space of ten days and did give him during that time, by way of stipend, at the rate of sixpence per day.

The indictment is not set forth in this case, the prosecution having been given up, and therefore the reporter would not have mentioned it, except to notice a proceeding which had the appearance of novelty to some; but being sanctioned by the approbation of three judges may serve as a precedent in cases under similar circumstances.

The prisoner having pleaded Not Guilty, and a jury sworn, Mr. Prime-Serjeant stated the case on the part of the Crown, and the witness was called.

Thomas Roden, sworn.—Examined by Mr. ATTORNEY-GENERAL.

Q. Where were you born? A. In Staffordshire.

Q. What brought you here? A. I enlisted for a soldier.

Q. In what regiment? A. In the 104th regiment.

Q. What was the nature of your duty in that regiment? A. A fifer.

Q. Did that regiment come to Ireland? A. Yes, please you, my lord, it came to Belfast.

Q. Did you come with it? A. Yes.

Q. How long ago? A. Three quarters of a year.

Q. Where did it go to? A. From Manchester.

Q. But after you came to Belfast, where did you go to? A. To Dublin.

Q. Look at the prisoner; did you ever see him before?

The witness hesitated.

Q. Which is the man? Point out Michael Maguire. A. I neither see Michael Maguire, nor Murphy.

Q. Do you know Michael Maguire? A. If I should see him, I should know him.

Q. Do you see him?

The witness looked about, but made no answer. He was then desired to look through all the seats, beginning with the first row, until his eyes reached the dock. After doing so, he said—I do not see him.

Q. Look again in the same manner. A. I do not see him.

The witness was then desired to withdraw, and the sub-sheriff of the county was desired not to suffer any person to speak to him.

Mr. ATTORNEY-GENERAL.—My lords, if I believed, that the witness had thrown his eyes towards the dock, I should desire to have

the prisoner acquitted immediately. But the gentlemen round me say, he did not throw his eyes to the dock. I shall now desire, as has been practised at the Old Bailey, that the prisoner may be brought to the front seat, and that some persons, as nearly of his own condition in appearance as may be, should be placed there along with him.

This was accordingly done. The gentlemen of the bar retired from the front seat—the prisoner was placed there, and five or six persons, taken from the crowd of auditors, were placed along with him.

The witness was then brought in, and desired to look at the several persons, sitting in the first seat, beginning at one and looking on to the other.

The witness did so, and after looking at them for some time, he laid his finger upon the head of a person who was not the prisoner.

The witness was ordered off the table and the prisoner was acquitted.

Murphy was then put upon his trial, given in charge to the jury, and the witness not being produced, the prisoner was acquitted.

The court adjourned.

CITY COURT,

MONDAY, December 28, 1795.

John Leary was arraigned upon the following indictment, the caption of which is omitted, as being the same as that set forth in Weldon's case.

The indictment contained two counts, one for compassing the King's death and the other for adhering to the King's enemies, and the overt acts laid in proof of both counts were the same, and were as follows: 1st, that the said John Leary did, on the 20th day of August, in the 35th year of the reign, at Suffolk-street, in the parish of St. Andrew, in the city of Dublin, associate himself with several false traitors, associated under the name of the Defenders, to aid, assist, and adhere to persons exercising the powers of government in France, in case they should invade Ireland; 2d, that he did meet with other false traitors to confer for and about the adhering, aiding, and assisting as aforesaid; 3d, that he did enter into, and become one of a society united and associated under the designation of Defenders with design to subvert the government, and did meet to consult about such object; 4th, that he did so associate with design to subvert the Protestant religion; 5th, that he did with intent to enlist a liege subject, to the jurors unknown, to aid and assist the French government in an invasion, traitorously administer a certain profession, declaration, and catechism to the said person, to the following purpose—"I am concerned. So am I. With who? With the National Convention, (meaning thereby the National Convention of France.)

What is your designs? On freedom. Where is your designs? The foundation of it is grounded on a rock. What is your designs? Cause to quell all nations, dethrone all —gs, (meaning thereby all kings,) to plant the true religion in the hearts; be just. Where did the cock crow when the whole world heard him? In France. What is the pass-word? Eliphismatis." 6th, That with the same objects he did cause the said liege subject to rehearse and repeat a certain catechism (as above set out); 7th, that he did with others procure the said person to enlist and become one of a society formed for the purpose of subverting the government; 8th, that with the same designs, he with other traitors administered and caused to be administered to the said person the following oath: "I, A. B. of my own good will and consent, do swear to be true to his Majesty King George the third whilst I live under the same government. More, I swear to be true, aiding, and assistant to every brother bound to me by this application, and in every form of article from its first foundation, January, 1790, and in every amendment hitherto. And will be obedient to my committees, superiors, commanders, and officers in all lawful proceedings and not otherwise, nor will I consent to any society or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother, nor in any violation of the laws but to protect my life and property and the lives and properties of my brethren. And I will subject myself to my committee-men in all lawful proceedings and not otherwise during the reign of King George the third, whilst I live under the same government. I likewise swear I will meet when and where my committee will please, and will spend what is pleasing to president and company—I will not quarrel nor strike person whatsoever, knowing him to be such, but will live lovingly and friendly with every one under that denomination—I will not rise any fight or quarrel on account of my present *intrus*, or back that for unto my brotherhood."

There was an averment to both counts that an open and public war was carried on by the French government before, and on the 20th of August, in the 35th year of the reign, and since, against "our most serene, illustrious, and excellent Prince Geo. III. King of Ireland and soforth."

The prisoner pleaded Not Guilty, and the Sheriffs having returned their pannel, it was called over.

THE JURY.

Hugh Crothers,
George Overend,
Daniel Geale,
Samuel Tyndall,
Richard Jackson,
David Weir,

Benjamin Woodward,
George Armstrong,
Edward Armstrong,
Archibald Tredennick,
James Atkinson,
Cornelius Gautier.

The prisoner was then given in charge to the jury, and Mr. Attorney-General stated the case, to the same effect as in Weldon's trial.

William Lawler was produced, but before he was sworn,

Mr. M'NALLY.—Do you believe in the existence of a God, and rewards and punishments hereafter? A. I do.

The witness was then sworn.—Examined by Mr. PRIME-SERJEANT.

Q. Of what country are you? A. Of Ireland, Sir.

Q. To what profession, or trade were you bred? A. To the Protestant religion.

Q. To what trade? A. The gilding.

Q. Where have you worked? A. In Ireland.

Q. Any where else? A. In England.

Q. At what time have you worked there? A. In the year 1791.

Q. What time did you return? A. Two years.

Q. During your residence in England, were you of any society? A. Yes.

Q. What society? A. The London Corresponding Society.

Q. After your return to Ireland, did you become a member of any society in Dublin? A. I did.

Q. Of what society? A. I do not know the name of it.

Q. What became of that society? A. It was dissolved.

Q. Did you become a member of any other? A. I did.

Q. Of what? A. The Telegraphic and Philanthropic societies.

Q. These were two different societies? A. Yes.

Q. Do you remember the name of any person, who was a member of either, or which of them? A. John Burke belonged to them both.

Q. Do you recollect what the general subject of discussion, or debate was? A. After Burke found the first society was dissolved, and he was expelled the College, he collected ten persons, I was one, and he told us the object of each was to get ten, and each of these ten was to get five, as they would have a number sufficient to take the castle. One hundred were to get soldiers' clothes, by which the citizens would think the soldiers had joined them.

Q. In the course of last summer, did you become a member of any other society? A. When we had made up our ten, we were to inform Burke, and having made up my ten, I did inform him, and he got a room in High-street for the different tens to meet in.

Q. Did they meet? A. They did, and he called it the Philanthropic Society; and any member proposed any friend he thought proper, and he accordingly was elected a member.

Q. Pray sir, have you ever heard of any party or set of men, known by the name of Defenders in this country? A. I have.

Q. Were you ever admitted a Defender? A. I was, in Barrack-street.

Q. And by whom? A. By Weldon.

Q. What Weldon? A. Of the Black Horse.

Q. Do you recollect the manner in which you were admitted? A. By an oath administered, or declaration: two papers were read.

Q. Where are they? A. I do not know.

Q. I will shew them to you—look at these papers (producing two papers)? A. These are the papers I was sworn to by Weldon.

Q. Was any other communication made to you; any sign; or signal? A. Weldon shewed me the signs, so as to know a Defender.

Q. Shew them to the jury. A. Weldon told us when we were in company, and wanted to know a Defender, the sign was, to put the two hands joined backwards upon the top of the head, and pretend to yawn, then to draw the hands down upon your knee, or upon the table. Then the other answers, by drawing the right hand over the forehead, and returning it upon the back of the left hand: The person in answer, or reply to that, draws the left hand across the forehead, and returns it to the back of the right hand. Upon shaking hands, they pressed the thumb of the right hand upon the back of the left, and not to be afraid to hurt the person, and if they asked, what was the pass-word, "Eliphismatia."

Q. Did you ever see these papers in the possession of any man of the name of Kennedy? A. Yes, sir.

Q. And you told Alderman James, that he would find them with Kennedy? A. Yes.

Q. Where? A. At the post-office.

Q. In what part about Kennedy? A. In his fob.

Q. After you were sworn in Barrack-street, was there any mention of any future meeting? A. Weldon was asked when there would be any meeting: he said there would be a meeting in Thomas-street, he believed, in the course of the next week, and he would inform Brady to let us know.

Q. How soon after you were sworn, was there any meeting, at which you were present? A. I do not know. It was of a Sunday.

Q. Can you form any belief as to the time, whether a week, or a month? A. It was not long after.

Q. Where was that meeting? A. In Plunket-street, it was Brady and Kennedy brought me there. I was walking on a Sunday and they brought me there.

Q. Do you know John Leary? A. Yes, sir.

Q. Point him out to the court and the jury? A. There he is in the dock.

Q. Be so good as to tell the court and the jury, who were at the meeting in Plunket-street, as you know? A. Brady and Kennedy.

Q. Who else? A. I cannot say exactly.

Q. Can you say, was Leary there? A. I think the first place I saw him, was at Stoneybatter.

Q. Then am I to understand you to say, whether he was at Plunket-street, or not? A. He might be there for all I know.

Q. And do you not know, he was at Plunket-street? A. I do not.

Q. How long after the meeting at Plunket-street was the meeting at Stoneybatter? A. I cannot say.

Q. I do not mean that you should tell exactly—it was after the meeting at Plunket-street? A. Yes, sir.

Q. You saw Leary there? A. Yes.

Q. You are positive you saw him there? A. I did.

Q. How came you to go there? A. Walsh, a tailor told me of it.

Q. And you went with him there? A. Yes.

Q. In what character did you go there? A. As going to Defenders.

Q. Was any person sworn at that meeting? A. Hart brought in a young man and another along with him.

Q. Was there any oath administered, or any book produced?
 A. Hart had a book in his hand. The young man seemed unwilling at first. Hart said the object was to assist the French, when they would come.

Q. Did you hear him make that declaration? A. I did, and all present, or else they must be deaf.

Q. Was Leary present, I ask you again? A. He was.

Q. Was there any objection made to what Hart said by anybody?
 A. No, sir.

Q. After the man was sworn, did Hart do anything else? A. He had sent some to get arms that night, pistols, and swords:—he desired them to bring what they had, as they intended to go out that night; that they knew a young man at one of the houses where they intended to go. Leary seemed to be a little in liquor at the time.

Q. After the young man was sworn did anything else happen?
 A. Hart gave the signs and the pass-word, Eliphismatis.

Q. Did he give the same sign, that Weldon gave you? A. He did.

Q. Did you hear the purport of the oath administered by Hart?
 A. No.

Q. After swearing, was there any proposal made by Hart?
 A. He desired such of the young men as were present, who had not arms, to go and get arms.

Q. (By the Court.)—Had any one arms there? A. I had a sword and pistol.

Q. Was there any other person with arms? A. I did not see any.

Q. Did Hart exercise any authority, or do any other act? A. He was a committee-man, and in consequence of the persons not returning, he desired every person present to come to the table, and lay their right hands upon it, and on their oath to come the next night with arms.

Q. Did the company obey? A. Every one that was present.

Q. Was Leary present? A. I cannot say he was present just at that time.

Q. You say, he was present at the time, the oath was administered?
 A. He was.

Q. And at the time the declaration was made by Hart of the motives? A. Yes.

Q. After that conversation, were any arms taken? A. Not as I know of. I saw Murphy since; he told me arms were taken.

Q. Had you any conversation with Leary? A. I had, at his own place.

Q. When was that? A. In the course of the week after.

Q. What did he tell you of the proceedings of that night? A. He said they went to one house, where there was a great noise, and a ringing of a bell—that they had a stone to throw the pannel in: he had a blunderbuss in his hand, and had gone round to the corner of the house to see the person ringing the bell; he could not see the bell, and believed it was in the chimney—not seeing it, he came back and struck the pannel with the butt-end of the blunderbuss and broke in the pannel, and also broke the stock of the blunderbuss.

Q. (By the Court.)—Where was this house? A. At one side of Blackhorse-lane.

Q. Was it the same night? A. I cannot say.

Q. What night did you understand it was? A. I understood from Leary it was the same night that I had left them, that they had gone out.)

Q. What more did he say was done afterwards? A. He said, he ran up stairs, saw the person ringing the bell, and tripped the legs from under him.

Q. I forgot whether you said he gave any account of what became of the blunderbuss? A. He said, that after tripping the legs from under the man, they took away the arms that were in the house.

Q. But what became of the blunderbuss he had? A. I understood from him, that he had left it with a person to be mended.

Q. Did you see Hart afterwards? A. I did.

Q. Had you any conversation with Hart as to what passed?

(COURT.—Was Leary present? A. No.

Then this is not evidence.)

Mr. PRIME-SERJEANT.—My lords, I do not wish to press it. But here was a direction given by Hart, and I want to shew it was followed up.

Mr. Justice CHAMBERLAIN.—I think it is not evidence unless Leary was present.

Q. Do you know what became of the arms which were taken that night? A. Leary told me afterwards, when we were walking up Blackhorse-lane and we came to a house, that it belonged to a committee-man, and that the arms were lodged in a hay-stack belonging to that man.

Q. (By the Court.—Do you recollect the day? A. I do not, it was either of a Monday or Tuesday.

Q. Was it the Monday or Tuesday after the meeting? A. No.)—He had a pair of woman's shoes, which he had mending and was going home with them; we went up Blackhorse-lane and we turned into a house. There were some men sitting down, in a place where they had drawn home some hay. Leary spoke to one of them, whom he told me afterwards belonged to the place. He pointed out to me the place where the hay had been, under which the arms had been put. But the hay was not then in the place at that time we saw it. He said the man told him a person came to take away the arms as the hay was to be removed.

Q. (By the Court.—You say there was no hay upon the place where the arms had been? A. There was not. Both the hay and the arms were removed, for I could not see any.

Q. Do you say the prisoner told you the arms had been removed? A. He said, the man who owned the place told him that he gave notice to the people to remove the arms, as he was to take away the hay.)

Q. You said the owner of the hay was a committee-man? A. So Leary told me.

Q. Describe the situation of the house? A. The house was on the right hand of the lane, but we went in at a gate, and when we entered the gate, the house was on the left side.

Q. Did Leary tell you with whom he left the blunderbuss? A. I do not recollect.

Q. Did he tell you the place? A. No.

Q. Were you at any meeting, after the meeting at Stoneybatter?
A. I was, at Nolan's in Drury-lane.

Q. Were you at any other? A. I was at Toole's, the upper end of Cork-street, where I was taken.

Q. Did you know there was a meeting there? A. I did.

Q. Did you suppose it to be a meeting of Defenders? A. It was: after the army had been after some of them, I saw Murphy, who had been taken up and was afterwards let out.

Q. But did you ever tell any person, that there would be a meeting at Toole's in Cork-street? A. I did.

Q. Whom? A. Mr. Cowan and Alderman James.

Q. You told of this meeting? A. I told them of it before. It was after I gave my information that these persons went to Toole's. I knew they were to meet there to be out of the way. Dry and others were to meet—but I had given informations of them before, and it was settled that I should be there.

Q. You talked of a meeting at Nowlan's? A. Yes: in Drury-lane.

Q. Who was at that meeting? A. Coffey was in the chair; Dry, Turner, Cooke, Hart, Lewis, Kennedy, and Flood.

Q. You have seen all these people at different meetings of Defenders before? A. I had not seen Lewis—Leary was not there.

Q. Do you recollect any particular conversation with Hart there?

Mr. M'NALLY.—My lords, I object to this evidence. The witness has sworn that Leary was not present, and therefore no conversation can be evidence.

Mr. PRIME-SERJEANT.—I have the authority of this court for this evidence upon the former trial.

Mr. Baron GEORGE.—That came out upon the cross-examination.

Q. When did you discover all you have told, and why, and to whom? A. I told it to Mr. Cowan in Grafton-street.

Q. Why did you tell it? A. In consequence of what Hart told me.

Q. What was that?

Mr. M'NALLY.—I object to that question.

Mr. PRIME-SERJEANT.—This is not to affect the prisoner. Surely the witness may tell what was his motive.

COURT.—The private conversation between him and Hart was objected to upon the former trial, and refused to be admitted upon the direct examination. It afterwards came out upon the cross-examination. Any motive or avowal by Hart in the absence of Leary is not evidence.

Q. When was the meeting at Toole's? A. On the Saturday after.

Q. Was there any general proposal of any kind made at Nowlan's?

Mr. M'NALLY.—I object to that.

Mr. Justice CHAMBERLAIN.—We are of opinion, that all acts done at general meetings are evidence; but the private declaration of an individual, not communicated to the body, or at all adopted by it, are not evidence.

Q. Was there any general proposal made to the meeting? A. Coffey wanted to know what number of Defenders were in Dublin, that they might have officers.

Q. Was there any money collected? A. None, but twopence a piece for the beer that was drank.

Q. Was there any proposal, or demand for money at Plunket-street? A. I was asked for sixpence.

Q. For what purpose? A. To buy powder.

Q. Was there any money given? A. I said I had none. Kennedy gave a shilling; I laid it down and took up sixpence and gave it to Kennedy.

Q. What brought you to Plunket-street? A. Brady and Kennedy brought me there. They said they were Defenders.

Q. (By the Court.)—Was there any signal made use of? A. No; there was not.

Cross-examined by Mr. McNALLY.

Q. You have sworn that you believe in God. Have you made any declaration to the contrary? A. Never. I was at a meeting with Galland, John Burke, and Le Blanc, who would wish to persuade me that there was no Saviour. But I never heard any one say, or deny, that there was a God.

Q. And you always, I presume, have held a contrary doctrine?

Court.—He is not bound to answer that question.

Mr. McNALLY.—In the case of the King v. Taylor, Peake's N. P., as witness was asked as to his belief in Jesus Christ, that was not thought a proper question. But to ask him as to his belief of a God is a legal question.

Q. You said you were taught to believe in the Protestant religion, and that there was a Saviour? A. I was.

Q. Have you always, and do you yet adhere to those opinions? A. These men whom I mentioned before, had with their doctrine almost persuaded me, that there was no Saviour, but I saw since through it.

Q. You mentioned the names of Galland and John Burke—why did you not mention the Christian-name of Galland? As you are a Christian, do you not know the christian name of Galland? A. I do not know.

Q. Are there not two persons of that name? A. There are; the man I speak of was an engraver.

Q. You have seen through all their false doctrine—how long have you been converted? A. Since that time, three quarters of a year.

Q. Was it since you gave information to Alderman James, or before? A. It was before.

Q. You were a Christian before you went to Alderman James? A. Yes.

Q. Is that the truth? A. It is.

Q. You were bred a carver and gilder; A. I was.

Q. To whom did you serve your time? A. I was bound to Mr. Robinson in College-green.

Q. Does he now live in Capel-street? A. I have seen the name over a shop there, but I do not know whether he is the man, or owner of the shop.

Q. Do you not believe, that the Jack Robinson, who formerly lived

in College-green and the Jack Robinson in Capel-street, is the same person? A. I believe so.

Q. Have you never seen him in Capel-street? A. I might, but not in that shop.

Q. Do you not know, as a gilder, every man of eminence in that line, keeping a shop? A. I do not recollect ever seeing at that place the name of Robinson up, only that time.

Q. Do you believe there are two Cowan's carrying on the same business in Dublin? A. There are; himself and his son.

Q. They live in one house? A. As I hear.

Q. If there were another, would you not hear of it? A. I believe so.

Q. And by the same rule would you not know, if there were two of the name of Robinson? A. I have heard, he is the same person.

Q. How long did you live with him? A. About three years.

Q. How long were you bound to serve him? A. Seven years.

Q. Then you served only three out of seven? A. That is all.

Q. You were a confidential servant to him? A. I was an apprentice to him.

Q. He had always a good opinion of you as an honest and fair young man? A. I cannot say he had at one time, or he would not have done what he did.

Q. What was that? A. He gave me a good horse-whipping.

Q. He never made any charge upon your integrity? A. He did.

Q. What was the charge? A. There were women who used to work at the gilding business over the front shop, and the men at carving in the room over that up stairs. There were some small frames missing. Mr. Twigg and one Ryan, were called up to the gilding-room, and had some conversation; Mrs. Robinson called me to go to the master for a shilling, and I understood that afterwards Twigg informed him I was listening. I said I was not; they brought me up and charged me with taking those things. I denied it. Mr. Robinson brought up a rattan with a ferrule upon it, and he laid on me. In the evening Mrs. Robinson brought me some supper. I could not take it at the time and got my things and went away. I went to a woman who had nursed me, and the people in the house not hearing me, I slept in the out-house all night, and when the men went out in the morning, I told the woman what happened between me and Jack Robinson.

Q. Was that the only charge against you? A. That was all.

Q. Do you forget the punch-ladle, Mr. Lawler? A. No.

Q. Were you ever charged with stealing a punch-ladle from Champion? A. Never.

Q. Were you never charged with stealing a punch-ladle, which your mistress sent by you to a silversmith? A. No.

Q. You are an excellent workman? A. I cannot say.

Q. What made you leave Robinson? A. In consequence of that leathering.

Q. How soon after you left Mr. Robinson did you go to England? A. After serving the remainder of my time to Williamson in Grafton-street I went to Gallagher, he having spoken to me before I was out of my time.

Q. (By the Court.—Did Robinson assign your indentures? A. I was informed he ran away.)

Q. You went to England? A. I did.

Q. And was a member of the Corresponding Society? A. Yes.

Q. Did you honour that society with the name of Lawler? A. No.

Q. What then? A. With the name of Wright.

Q. What Christian name? A. William Wright.

Q. What was your motive for changing your name? A. I had listed in the 29th regiment of foot.

Q. How long did you remain with that regiment? A. About a month.

Q. You were an attested soldier. A. I was.

Q. By virtue of your integrity, Mr. Wright Lawler, when you deserted, did you not break the oath you had taken? A. I do not know what oath I took. But I took one.

Q. After you had deserted you went into the Corresponding Society by the name of Wright? A. I did.

Q. Where did it usually meet? A. One division met in Bishops-gate-street.

Q. Was that the division you belonged to? A. Yes.

Q. Did they meet in the day, or in the night? A. In the evening.

Q. Is not Bishopsgate-street one of the most public streets in London? A. It is a wide street.

Q. And a great thoroughfare? A. There are a great many pass there; but Cheapside is more public.

Q. After you deserted you went to London to conceal yourself? A. I did live there.

Q. You went there publicly? A. I cannot say publicly, because there was not one in a hundred who knew me.

Q. Did you walk the streets publicly, or go in a sedan chair to the Society? A. No, nor in a hackney coach.

Q. You have led a remarkable life since you came to Dublin? A. An honest life; I never cheated any man.

Q. How long is it since you were wounded? A. The Philanthropic Society, Burke, Le Blanc, Flood, and several more were together: a man belonging to Ringsend, I can't think of his name, was in custody in a watch-house, and they agreed on a meeting to go there and take him out, which we did, and one Thompson, who had a hanger, cut me, when I went in.

Q. (By the Court.—Was he a man of the watch? A. No: one of the Society.)

Q. Who instituted that Society? A. I acquainted Burke I had made up my ten.

Q. Were you not the root from which it sprung? A. I made up my ten.

Q. Who made the proposal for the rescue? A. I did.

Q. Were you armed as well as the rest? A. I was.

Q. With what? A. Pistols.

Q. How many? A. Four.

Q. How many ball cartridges had you at that time? A. Not one.

Q. Were there any shots fired that night? A. There was a pistol fired.

Q. Who fired it? A. Am I to answer?

Court.—You are not bound to criminate yourself.

Q. Do you know who fired the pistol? A. I do.

Q. Do you choose to answer? A. If your lordships think I am bound to criminate myself, I will answer.

Court.—You are not bound to answer to criminate yourself.

Q. Was the prisoner taken out of the police-house that night? A. I did not see him that night, but I heard he was taken out.

Q. When you heard the shot, you scampered off? A. I did not scamper off.

Q. Why did you leave the place? A. Because I was cut in the hand.

Q. Who generally acted as president of the Philanthropic and Telegraphic Societies? A. Sometimes one and sometimes another.

Q. Did you know a man of the name of Lawler there? A. I believe I did.

Q. Who was treasurer? A. I was to one division.

Q. On your oath was not the Philanthropic Society instituted originally for the purpose of reading, and were there not subscriptions for the purpose of buying a library? A. It was to act as a Philanthropic Society, that was the name they put on it, as lovers of mankind.

Q. Were they to murder one part of their fellow-subjects? A. They were all ready to do what the Telegraphic would do.

Q. Was not the Philanthropic Society dissolved in consequence of a sanguinary proposal made by a person? A. The Philanthropics were to meet at Nowlan's on the 23d of August, the same day the Defenders were to meet in Cork-street.

Q. You were a member of both societies—which were you to meet that day? A. I went to Dry.

Q. You went to the Defenders? A. After I went there, Dry, Coffey and Kennedy went with me to Nowlan's.

Q. Did you not leave the Philanthropic Society because they would not do an injury? A. No.

Q. Was not that society instituted for the purpose of improvement? A. Burke and Le Blanc proposed reading, writing and learning French, whichever they chose, and they subscribed to buy paper—but it was a cloak, for if any one came in, they could do nothing to them, as they were only learning to read and write.

Q. (By the Court.—They were to learn French? A. They were.

Q. Was it through Le Blanc? A. He was to have taught it.)

Q. You were treasurer to this society? A. Yes: to the Philanthropics; one part of it.

Q. Were you ever examined as a witness in a court of justice before the trial of Weldon? A. No.

Q. Never in England? A. No, sir.

Q. Was there ever a charge exhibited against you in England? A. No.

Q. Do you remember the transaction of the Dog and Duck? A. There is not a man in England, who would not give me a good character as to that.

Q. Were you ever charged with stealing a watch? A. Never.

Q. With stealing anything? A. But by Robinson.

Q. Did Gallagher throw out any imputation as to integrity? A. I do not recollect that he did.

Q. Did you never hear, that he made any charge upon you? A. Not to my knowledge.

Q. Did neither he, nor his wife? A. They did not: after I left him, he gave me a great quantity of goods, and Mrs. Gallagher said it was better to keep a trotting horse than a gilder, he used so much coals and candles.

Q. Was there any charge of cruelty exhibited against you in that family? A. I never did any act of cruelty.

Q. Was there no charge made against you? A. No. If I did, I do not think he would give me a stroke of work.

Q. Were you never charged with putting out an old woman's eye? A. There was a small bottle of eye-water, and it was said there was spirit of turpentine put into it. I was innocent of the charge.

Q. You have said the prisoner was not present at Plunket-street? A. I did.

Q. What part of Stoneybatter, was the meeting in? A. The corner of Arbour-hill.

Q. Is it not at this side of the Maypole? A. I do not know where the pole is.

Q. There was an oath proposed to a person unknown, did you never see him after? A. Never to my knowledge.

Q. Did you before? A. Never.

Q. Did you ever enquire his name? A. No.

Q. Had you seen Leary that evening before? A. Not to my knowledge.

Q. Did you see him that evening after? A. In the course of the week after.

Q. But after the meeting broke up did you see him? A. No.

Q. He was a little in liquor? A. Yes.

Q. You were near the door—how near was he to you? A. I do not know whether he was in the room at the time the oath was put.

Q. And you do not know, whether he heard the oath put? A. No.

Q. Nor whether he saw the signs you mentioned? Will you swear he was in the room at the moment the oath was taken? A. No.

Q. You did not hear the oath? A. No.

Q. How came it that you heard what Hart said, and did not hear the oath? A. There were two windows in the room and some got into the windows to prevent people from looking in, and some got round him and the stranger.

Q. You were armed? A. Yes.

Q. Where did you carry your arms? A. My sword was under my coat, and pistols were in my pocket. I was desired to bring them there.

Q. They were concealed? A. They were.

Q. Did you take them out? A. I opened my coat to shew them.

Q. Did every one in the room see the arms? A. Hart did, and several saw the arms, because I opened my coat and shewed them.

Q. Was there any person armed but you? A. They said, they were not.

Q. You believe what they said? A. I do.

Q. There was a man there armed with a fiddle? A. There was a fiddle playing in the house; I think it was up stairs.

Q. Not in the room where you were? A. No.

Q. Where was the house broke open, that you spoke of? A. On one side of Blackhorse-lane.

Q. Was that matter ever made public? A. Not as I saw.

Q. No reward by the owner of it? A. Not as I saw.

Q. Did you ever make any enquiry about it, or the name of the person whose house it was? A. No, I did not enquire. The day Leary and I was out, he shewed me a house at the right hand, where they had been. There was a gate opposite to us, and they went over that gate to the house.

Q. You did not mention a word of this upon your direct examination? A. I was not asked as to that.

Q. You were sworn to tell the whole truth? A. I told nothing else.

Q. When you appeared upon the former trial, did you say a word about this house—did you, or did you not? A. I did not, but I knew it.

Q. Did you say anything upon the last trial, anything of what you have stated, when you mentioned that Burke was expelled from the College? A. I said, I belonged to the society.

Q. But did you say anything as to Burke's proceedings? A. No, I was not asked.

Q. Do you recollect anything upon the last trial, respecting his sacred Majesty? A. How, as to Weldon.

Q. No; but respecting the King? A. I do; Weldon told me when I took the test, that if the King's head was off to-morrow, there was an end of our allegiance.

Q. Did you not say there was a time you thought little of killing the King? A. At the time the oath was put.

Q. How often have you tendered the oath yourself? A. What oath?

Q. Have you not been in the habit of administering oaths? A. At the times the Philanthropic met in High-street, there was some little boys carrying about the books. I swore them not to divulge the secrets of the society, nor withdraw themselves from it.

Q. Were they members of it? A. They were.

Q. Did you ever administer an oath, not to give evidence against any of the society? A. Burke swore the ten, but I do not remember what the oath was.

Q. (By the Court.)—Did you swear those little boys? A. I did.

Q. Do you recollect swearing one of these boys with a pistol to his breast?

The witness did not answer.

Q. Have you sworn against any of these little boys? A. I do not recollect that I did.

Q. Will you swear you did not? A. I cannot swear that.

Q. You can swear the facts without an intention of remembering what you swear to?

Witness did not answer this question.

Q. But you do not remember, whether you have sworn against these little boys, or not? A. I cannot.

Q. I ask you this, have you not sworn a great deal that you do not remember? A. I swore a great deal at the Philanthropic Society.

Q. (By the Court.)—Do you mean what you swore here, or your information before the magistrate? A. No; but what I swore at the Philanthropic Society.

Q. Have you not sworn a great deal before the magistrate in your information, that you do not remember this day? A. I do not think I ever swore Brady, or Kennedy, or Flood, or Coffey to that.

Q. You gave information before a magistrate? A. I did.

Q. You swore to them: now do you remember, as you sit upon the table, everything you have sworn in those informations against Leary? A. No.

Q. Or what you have sworn against any of them? A. Yes, I do recollect.

Q. Do you remember the name of every person you swore against? A. I do.

Q. Now mention the names of the little boys to whom you administered oaths? A. I cannot.

Q. Recollect the names of the little boys, you swore? A. There is one lives in Castle-street—there was a good many, and I did not know their names at that time.

Q. Did you ever swear a Philanthropic, a Telegraphic, or a Defender, never to give evidence against any member? A. At the Telegraphic Society, Burke and a great many more were present—one of the men wanted to swear the members present, and went down and brought up a book: two or three were sworn, and he desired me to take up the book and swear, but as I had it in my hand, they desired me to stop, for they would not admit the oath to go round.

Q. Do you recollect the trial of Jackson in this country? A. I do.

Q. You recollect a particular witness of the name of Cockayne upon that trial? A. I do.

Q. I ask you on your oath, do you know of any design against the life of Cockayne? A. There was Le Blanc the Frenchman, the night before Jackson's prosecution, and a man who lived in Capel-street, belonging to the Philanthropic, knocked up against my window. My wife got up, and asked who was there? They desired me to put on my clothes, and if I had any weapons, to bring them out. I did so. They told me we should stop Cockayne from appearing against Jackson. We went to a house at Stephen's-green, in the way leading to Leeson-street, where he said Mrs. Jackson lived—he desired us to wait till he came back. He went in, and when he returned, said Cockayne had been there, but was gone. He then went for Waller, and brought him: We were walking up and down the street better than two hours, waiting for Cockayne.

Q. (By the Court.)—What was the name of the other man? A. I do not recollect; he lived in Capel-street. We got a glass of punch before we went to the green.

Q. Who went into the house? A. Le Blanc. We went afterwards to Henry-street, to a house which Le Blanc pointed out, where he said Cockayne lodged up stairs, and said he would get in over a little glass-case: he desired us to walk up and down the street, till he went for Waller. He and Waller returned. After we walked back and forward for some time, and seeing no light up stairs, he thought Cockayne had not come there. We were for two hours and a-half. Le Blanc said, if he could see him, he would take him out of the way, to prevent his appearing. But if he was killed, and the court should know it, the informations he had given could be read; but if we kept him, and he did not appear, Jackson would be acquitted.

Q. You were present, and one of that party that went first for the purpose of assassinating the man, and afterwards determined to keep him confined? A. I do not say we went for that purpose.

Q. You were one of the party? A. There were four of us.

Q. Mention their names? A. The man who lives in Capel-street, the left hand side, he is a coachmaker; Le Blanc and Waller, who works at Jackson's foundery in Church-street, and myself.

Mr. PRIME-SERJEANT.—Whereabouts in Capel-street does this man live? A. He lodged in Capel-street with his mother, on the left side, in a gate-way.

Q. What is his mother's name? A. I do not know.

Q. What part of Capel-street is it in? is it between Essex-bridge and Mary's-abbey, or near where the lottery is drawn? A. I cannot say.

Q. You know where the lottery is drawn? A. Yes: it is this side of the lottery.

Q. Where did Le Blanc live? A. In Golden-lane.

Q. He was an embroiderer? A. Yes.

Q. (By the Court.—You mentioned that at the meeting in Stoney-batter, Hart said aloud, the object was to get arms to assist the French? A. Yes.

Q. Was Leary present at that time, or not? A. I cannot say.)

Q. (By one of the Jury.—You say, that Hart desired such as had not arms, to go home and get arms; therefore, I conceive you were the only person armed, and the others went home for the purpose of getting arms? A. I was the only person armed, that I know of. Hart desired them to go for arms, and not finding them return, he desired those who remained, to put their hands upon the table.)

Q. How many remained? A. About fourteen.

Q. How many went away? A. At the time the young man was sworn, there were twenty in the room.

Q. Then there were but six who went for arms? A. When Hart desired those who remained to lay their hands on the table, I beckoned to Walsh and he came out, but said, he had a naggin of punch to pay for. I went home and was afterwards informed, that they were out.

Q. Was the prisoner at Stoneybatter that night? A. He was there.

Q. Was he present at the time, the oath was sworn upon the table? A. Not that I know of.

Q. Was the prisoner ever sworn as a Defender? A. Not as I

know of, but whenever we met in the streets, he used to make signs, and shake hands as Defenders do.

Q. But you never heard him sworn? A. Never.

Mr. M'NALLY.—My lords, I omitted to examine the witness as to the papers: upon the former trial, his evidence went to show they were found upon Kennedy, but nothing more.

Court.—Examine him.

Q. How often have you seen these papers before? A. Very often.

Q. Can you take upon you to swear, who wrote these papers? A. To the best of my belief, it was Hanlon.

Q. Did you ever see Hanlon write? A. No.

Q. Can you swear whose writing they are from having seen any person write? A. No.

Q. Is there any private mark upon these papers? A. I would know them anywhere.

Q. Is that an answer? A. I described them to Alderman James, on account of their being much tumbled.

Q. I ask you, have you any private mark upon these papers? A. No.

Q. Have you ever seen them in the possession of any other? A. In the hands of Coffey.

Q. Did any one else see them? A. George Lewis.

Q. Will you swear this is the identical paper, which was in the hands of Weldon, which you saw in the hands of Kennedy, and in the hands of Coffey? A. The very paper.

Q. From what mark, can you say that; and that it is not a paper wrote by the same person? A. I took particular notice, at the time Weldon swore me, of the hand the papers were wrote in, and that they were damaged.

Q. If the same man, who wrote these papers, wrote duplicates, and that they were damaged, would you swear to them? A. I believe these are the papers.

Mr. ATTORNEY-GENERAL.—Upon what occasion did you see the papers in the hands of Coffey? A. Sunday 23d of August—when we were at Dry's in Cork-street—Coffey swore George Lewis upon them, and Kennedy put them in his breeches' fob.

Alderman James sworn.—Examined by Mr. SAURIN.

Q. Do you recollect having received information of any papers being in the custody of any person? A. I do.

Q. From what person? A. From the witness who is just gone off the table.

Q. Of what papers? A. He told me of the Defender's oath, that I would find it—

Mr. M'NALLY.—My lords, I object to this. If the magistrate took down the information, the writing should be produced—

WITNESS.—I had a written memorandum of it, but do not know what I did with it. I gave a copy of it to Mr. Carleton, and gave him directions to search Kennedy's fob for a particular paper.

Mr. SAURIN.—What day were those informations given? A. I believe on the 27th or 28th of August last.

Q. Did you ever issue a warrant to apprehend Lawler himself? A. No.

Q. Do you know anything of his being apprehended? A. He came on Saturday, 29th of August, for I was particular in taking a memorandum of that, and gave me information of several Defenders.

Q. Do you know the circumstances of Lawler's being apprehended? A. I do.

Q. What were they? A. He came to me on Saturday evening and asked my advice or opinion——

COURT.—This private conversation is not evidence.

MR. SOLICITOR-GENERAL.—My lords, where it is necessary to shew, that the witness came in voluntarily.

COURT.—That appears already from the testimony of the witness himself.

Q. Where was it that Lawler was apprehended? A. I believe at Crumlin, I was so fatigued myself after the severe duty that week, that I sent to Messrs. Godfrey and Atkinson to arrest the people assembled at Crumlin.

Oliver Carleton, Esq., sworn.—Examined by Mr. KELLS.

Q. Did you receive any directions from Alderman James, with respect to Kennedy?

MR. M'NALLY.—My lords, I submit that no evidence can be given with regard to Kennedy, who is not upon his trial.

MR. JUSTICE CHAMBERLAIN.—Recollect the tendency of this examination. The witness gave an account of these papers, that he saw Coffey swear Lewis to these papers, and that Kennedy took them up, and put them into his fob. Surely if it appears they were found there, it will be some evidence of the identity of these papers, to go to the jury.

MR. M'NALLY.—My lords, there is no evidence that the prisoner was sworn upon these papers.

MR. ATTORNEY-GENERAL.—The only object of Mr. Carleton's testimony is to let in these papers to be read. What effect they may have is another question.

Q. Where did you find these papers? A. In the fob of Kennedy's breeches.

Q. How came you to search there? A. By the particular directions of Alderman James.

Q. These are the papers? A. They are.

John Atkinson, Esq., sworn.—Examined by Mr. RUXTON.

Q. Did you hold any office in this city? A. Yes, sir, constable of the south division.

Q. Did you get any directions in August last to apprehend any person? A. I did.

Q. Did you execute those orders? A. I did.

Q. Whom did you apprehend and where? A. I went to Crumlin and apprehended five people, Lawler was one of them.

Q. You took him by the directions of Alderman James? A. Yes.

Q. (By the Court.)—Was it so far as Crumlin? A. It was near it.

Cross-examined by Mr. M'NALLY.

Q. Crumlin is in the county of Dublin? A. I believe so.

William Finnegan, sworn.—Examined by Mr. SOLICITOR-GENERAL.

Q. Where did you live in August last? A. In a place called the Blackquarry-road, in the neighbourhood of Stoneybatter: near hand to it.

Q. There is a road intervening between your house and Blackhorse-lane? A. There is a lane, but it does not go through. I am nearer Glasnevin than Blackhorse-lane.

Q. Was your house ever robbed? A. It was.

Q. About what time? A. I do not know: it might be in August, the beginning of the month.

Q. There were some arms taken out? A. There was.

Q. Have you a bell in your house? A. I have.

Q. Mention what happened at the time of the robbery? A. It was on Sunday night, that I am certain of, though the witness said it was on Monday or Tuesday. The first thing that alarmed me was throwing stones at a window; I got out of bed: they threw so hard against the window, I was afraid of opening it. They then broke the pannel of the door, and I desired the woman to ring the bell.

Q. Where is the bell situated? A. In the yard, there is a rope through the house, and the woman rung it from withinside.

Q. Were there arms taken? A. A brass-barrelled blunderbuss and a fusee and a couple of pistols.

Q. What is become of your nephew that was in the house that night? A. I do not know: he made examinations of that: I saw him swear the examinations.

Q. He swore to the arms? A. I do not know, I was not present, when the examinations were drawn.

Q. The arms were produced to him? A. No, they were produced to me.

Q. Did you hear, during the time of the robbery, any person complaining of the ringing of the bell? A. When I went out, the door being broken——

Mr. M'NALLY.—I object to this as illegal evidence.

Q. Did you hear any conversation going on, while the robbery was committing? A. Not while the robbery was going on, I did not.

Q. Did you hear the persons say anything? A. One of the persons asked me, why I rung the bell. I said the reason was to prevent myself from being robbed.

Cross-examined by Mr. M'NALLY.

Q. You say it was a woman was ringing the bell. A. It was.

Q. Had she lived with you any time? A. She had.

Q. Who else was in the house? A. A little boy and my nephew.

Q. Where was the boy? A. In bed.

Q. Where was the nephew? A. He was up, and threw the blunderbuss out of the window and it was broke, which displeased them.

Q. The blunderbuss that was broke was yours? A. It was.

Q. Then the door was not broke open by a blunderbuss? A. No, but by the axletree of a cart.

Q. Who was in the room with the woman who rung the bell?

A. She was in the kitchen.

Q. Was your nephew ill-treated that night by any person? A. No.

Q. His heels were not knocked from under him? A. No.

Q. He never rung the bell that night? A. No, he did not.

Q. What night was this robbery? A. Eleven o'clock on Sunday night.

[The papers were then offered to be read.]

Mr. McNALLY.—My lords, these papers are not evidence to go to the jury. They stand in a very different situation from what they did, when they were read upon the former trial, or I would not make the objection, because I consider myself bound to submit to every rule laid down by this court. It does not appear that those papers were ever in the possession of the prisoner—that they were ever shewn to him, or ever read in his hearing. It does not appear, that these papers and the prisoner were, in any one instance, ever together. I conceive, that the rule of evidence with respect to papers is this. If the paper be found in the possession of a man, it becomes evidence to go to the jury to consider for what purpose he had it in his possession. Or, if the paper be proved to be in the hand-writing of the prisoner, then after proof of that, it may be read in evidence against him. But if you recur to the evidence of Lawler, he has not presumed to say, that these papers were in the hand-writing of Leary. He saw the prisoner at Stoneybatter; there was a paper laid upon a book, and something said, which he does not know, but it does not appear, that either of these was the paper laid upon the book. Therefore, without going into the argument at large, I submit these papers ought not to be read. If it did appear, that these papers were at the meeting at Stoneybatter, the objection might be weakened. But there is no evidence of that, nor that they were read, so that the prisoner did not know of their contents. And no papers are ever read against a prisoner, unless there be some evidence, that he knew their contents, and assented to them.

Mr. PRIME-SERGEANT.—My lords, I conceive that these papers ought to be read upon two grounds. The principle upon which you have already determined one or two points of evidence goes directly to determine the admissibility of these papers, independent of the ground upon which they were originally offered. The principle upon which the general acts of a body are admissible against an individual of that body applies to these papers. The witness says he was sworn upon these papers. The signs were then communicated to him; and upon a meeting between him and the prisoner, there was a communication between them of one or more signs, particularly the sign of pressing the thumb upon the back of the hand. The ground upon which these papers were offered is as explanatory of what was said by Hart, acquiesced in by the prisoner, and acted upon that very night. The next ground upon which I conceive it to be admissible, even if the general ground were out of the case, is this: These papers were brought forward in support of the consistency of the witness Lawler, to show that he had at different times made the same declarations—that he pointed out these papers as being in the possession of Kennedy,

and the same principle which induced the court to let us into evidence of the place where the papers were found, calls upon the court to look at the papers themselves.

MR. ATTORNEY-GENERAL.—My lords, these papers were produced at a meeting of Defenders. Dry, Coffey, and Kennedy met at Cork-street. Kennedy produced the papers, gave them to Coffey, who swore Lewis and Kennedy put them up. This goes to show the system and design among them, and —

MR. JUSTICE CHAMBERLAIN.—I am of opinion this is evidence to go to the jury, in the point of view mentioned, namely, as evidence of the intentions, schemes, and designs of the persons associated under the name of Defenders; and if we stop this evidence it would interrupt the train of such discovery. It cannot be denied that there is evidence to go to the jury of the proceedings of Defenders. The first meeting was in Barrack-street, where an oath was administered to the witness, and certain private signals communicated to him to be introduced by; the prisoner was acquainted with them and communicated them to the witness; and therefore the papers must be material to develope the real design of the papers. It is necessary that the jury should be convinced what the schemes of the Defenders were, and there is nothing more proper to show that than these papers, because the jury may infer that every man associated must have been privy to their designs, provided they think the papers are the same, and of that they will be reminded hereafter.

[The papers were then read. *Vid.* Indictment.]

MR. McNALLY now addressed the court and jury, as counsel on part of the prisoner; and commenced the defence of his client by regretting the disadvantage under which the unfortunate man necessarily laboured, from being deprived of that great aid which all men derive who have the good fortune of being supported by the extraordinary and brilliant abilities of his friend Mr. Curran, assigned with him, as counsel for the prisoner; but who, in consequence of a particular event, was precluded from appearing in his professional character, on the present most serious and interesting occasion. But though standing alone, he said he would rouse his mind from depression, though weak and fatigued, yet he felt consolation from the cheering recollection, that the presiding judges, before whom he pleaded for the life of the prisoner, were not less eminent for their constitutional principles and legal knowledge than distinguished and revered for their patience and humanity. From the jury also he received comfort. Some of them were personally and intimately known to him—with the characters of all he was acquainted; and he was convinced in addressing them he submitted his thoughts to fellow-citizens, from whose wisdom and good nature he had to expect every favour and indulgence, and from whose verdict the prisoner had to expect such a decision as would be consistent with minds equal to the arduous task of discriminating between right and wrong, between truth and imposition, between affected candour and hypocrisy, and of adducing from the evidence before them such a conclusion as would fully satisfy their own consciences and be entitled to the approbation of the public, for whom they were trustees.

He here adverted to the statement which had been made on the part of the crown by the Attorney-General, on opening the case ; which, he observed, set forth a number of facts that did not afterwards appear in evidence, and which, of course, the jury were bound to expunge from their recollection when they came to contemplate upon the verdict which they should pronounce, and which, by the rules of justice, must result solely from testimony given in proof by the witnesses, and credited by the jury. He hoped it would not be understood, that in making this observation it was his intent to insinuate in the slightest manner any imputation that could affect the known candour of the first law officer of the crown. No ; on the contrary, he considered himself called upon, having this opportunity, publicly to declare, that humanity to the prisoner, as well as zeal to the crown, had on every prosecution as well as the present marked that gentleman's professional conduct, and bore honourable testimony to the benignity of his mind.

There were, he said, some principal objects to which he would presume to solicit the attention of the jury. These objects were :—First, the oath they had taken ; second, the pre-eminence of the great and sacred character who prosecuted ; third, the approver examined as a witness ; and, fourth, the nature of the evidence which that approver had divulged in support of that indictment.

He then proceeded to the first point he had proposed to submit to the jurors' consideration, and it called for their most serious attention, he meant the nature of that oath which they had taken when called upon as triors of the prisoner. They would recollect they had sworn that "they would well and truly try and true deliverance make between their Sovereign Lord the King, and the prisoner at the bar, and a true verdict give according to the evidence"—they would recollect that on swearing thus, they had appealed to the Almighty God to punish them if they did not do impartial justice. To find according to the evidence was the obligation of the oath. Now what does finding according to the evidence import ? It imports no less than this, that a jury should not find a verdict of guilty on any proof that was not convincing, clear, and strong as holy writ ; that was not free from imputation and divested of doubt. The evidence on which a man's life depended, on which a man's life might be the forfeit should be unclouded, unshadowed by uncertainty and clear as the sun at mid-day ; for evidence is that which puts the matter in issue on the ground of certainty ; where there is a doubt in a criminal case there cannot be a conclusion of guilt against a prisoner, but there must be a verdict of acquittal. Unless every man on the jury is convinced of the prisoner's guilt they are ruled by their oaths, they are compelled by their consciences, they are called upon by the rigid principles of justice, they are directed by the imperative voice of mercy to acquit. It was for this reason that by the old law prisoners accused of capital crimes were not allowed to exculpate themselves by the testimony of witnesses—the rule, however, was weak and dangerous, though the motive assigned to it was merciful and benign. No man, says Lord Coke, should be convicted but on clear and indubitable evidence, and that is the reason, continues his lordship, that prisoners were not allowed witnesses by the common law.

Mr. M'NALLY now gave a short statement of the indictment against

the prisoner. By this indictment, he observed, the prisoner stands charged with two distinct species of high treason, the most enormous offence that the law recognizes, or that the subject can be guilty of. The first charge is that "the prisoner at the bar with other false traitors did associate themselves for the purpose of aiding and assisting the persons exercising the powers of government in France, &c., waging war against the King, and did compass and imagine the death of our Sovereign Lord the King, with an intent our Lord the King to kill and put to death." The second charge against the prisoner is that "he was adherent to the King's enemies giving them aid and comfort," and both these offences were declared to be high treason by statute the 25 of Edward the Third, and that statute expressly required that the party accused of high treason, be thereof upon sufficient proof attained of some overt or open act by men of his own condition—that is by a jury.

As to the first of these charges it did not appear to him, that any overt act of compassing and imagining the King's death had been given in evidence; and therefore he would not now urge any argument upon the law on that species of treason, or recapitulate those which on a former occasion he had submitted to the opinion of the court. On the occasion he alluded to, his objections had been overruled by the court, and certain it was, the judgment of the court was supported by the highest authorities; authorities to which he must submit, though not convinced; they merited every respect from him, and it was his duty to bow with reverence to their judgment. Here he again urged that the law respecting the first charge in the indictment need not be stated to the jury; for that though the indictment spread its terrors over six skins of parchment, exhibiting no less than sixteen specific overt acts of treason, yet not one of those overt acts applied to the first charge, and he believed the learned judges who presided, would be of opinion, that only two overt acts had relation to the second, for which reason, he would take into contemplation only the second count, and those overt acts which appeared to support it.

As to the law on the second count or charge in the indictment, it struck him, that the species of treason set forth therein, contained two branches. First, "being adherent to the King's enemies in his realm, and giving them aid and comfort therein." Secondly, "being adherent to the King's enemies, and giving them aid and comfort elsewhere," that is, out of the realm. The offence charged upon the prisoner, and on which the overt acts were grounded, was clearly the first branch of the second species of treason, "being adherent to the King's enemies within the realm," but he submitted to the court, that there was no evidence to shew an adherence to the King's enemies within the realm; for there was no proof before the jury, that the King had enemies within the realm. Perhaps it might be asked, are not rebels the King's enemies? Are not traitors foes to their Sovereign? The answer is, that in contemplation of law, persons of such description are not the King's enemies. No man owing allegiance to the Crown, whether natural allegiance,—which included all his Majesty's subjects, or local allegiance, which included alien residents, were in contemplation of law, the King's enemies: the enemies meant by the statute of Edward the Third, were to be understood the subjects

of foreign powers, with whom the nation is at open war, and there did not appear a *scintilla* of evidence in the course of the trial to shew that the prisoner at the bar had adhered, or given aid, or had abetted such foreigners, or held the least connection, or the slightest intercourse with them within or without the realm. The charge he observed, was novel, though the law that provided against it was ancient. He doubted if there was a precedent to be found in the books more recent than the reign of Queen Elizabeth. He had seen one in the state trials of that reign, but it was so loose and faulty, as not to be an authority. Adhering to the King's enemies without the realm was a more frequent offence, but no such offence was set forth in the indictment, nor no overt act of such an offence. The overt acts of this species of treason as described by the books, were, writing and sending letters of intelligence to the enemy, supplying them with provisions, or warlike stores, or rather articles of a similar nature, not one of which overt acts appeared in the indictment. If, however, the court were of opinion, that the second count was well laid, he submitted, that the only facts, in proof, that applied to it, were those which tended to establish the fifth and eight overt acts, and that he would observe upon those facts and the credit they deserved, when he came to speak on the evidence given by Lawler the approver.

Mr. McNALLY now called the attention of the jury to the second object—the prosecutor. Who was the prosecutor? The prosecutor was the King. A character sacred, pre-eminent, and paramount to all others known to the constitution. A character to whom, politically speaking, the law attributed immortality and perfection—a character so elevated, that a great constitutional writer, after mentioning his prerogatives and his revenues, ascribes to him so great and so transcendent a nature, that he adds, the people are led to pay him the most awful respect, and to look up to him as superior to other beings. But that respect and reverence due to the Sovereign, must not interfere with justice; must not influence a jury, bound by their oaths to determine by the intrinsic weight of evidence, not by influence arising from extrinsic causes. The strongest proof a jury can give of loyalty and affection to their Sovereign, is to administer impartial justice to his subjects. The jury would keep in their minds that his Majesty did not come forward, on the present occasion, to prosecute for an offence against a private individual; but for an offence the most heinous that the law recognized; for no less an offence than an intent to destroy his own sacred life, by bringing war and desolation on the land. The horror that arose from the contemplation of such a crime, nay from the intimation of it, must strike a deep and sensible impression into the mind of every man—but he conjured the jury again to recollect the nature of the oath they had taken; to judge solely from the evidence, and that to determine fairly they must divest their hearts of all passion, and their minds of all bias; they should neither act from feelings nor from influence; and that without a dereliction of both, however worthy the motives might be which guided them, they could not decide conscientiously, the issue they were sworn to try, and truly to determine, between the King and the prisoner.

Look now on the witness—turn your eyes on William Lawler, the approver, by his own confession, he stands before you a principal

actor in the perpetration of a catalogue of crimes the most atrocious and shocking. Contemplate for a moment the transgressions of this miscreant, in which he would implicate the prisoner and consider his conduct seriously before you give credit to his evidence. In what character does he come forward? In that of an approver, that is a culprit, who being charged with a crime or crimes, for the purpose of saving his own life accuses another. It cannot be very material to a man of such a description whether he convicts the innocent or the guilty. A wretch who by his own confession attempted murder against the law, which would have little compunction in committing murder under the sanction of the law, when safety to his own life was the reward. He said under the sanction of the law, because an accomplice is clearly a competent witness, whether he be indicted or not, and for this plain reason, that if the evidence of such a man was entirely rejected, many crimes of the most enormous nature might be perpetrated with impunity. But there existed a general rule of law in such cases, to which the courts had always paid a tenacious regard, and which must strongly impress the jury, when stated to them by the learned judges on the bench, it was this—that unless some fair and unpolluted evidence was produced, corroborating and communicating a verisimilitude to the testimony of the accomplice, that testimony ought to have no weight with the jury. This was a rule of benignity, and he would venture to assert that the law reporters could produce but one exception to it; a solitary case reported by Mr. Leech, of a trial before Judge Buller, in England, and that exception did not forcibly apply here, for in that case, the witness on whose single testimony the jury found a verdict of guilty, was not impeached for the commission of any offence, saving that individual one in which he had been a *particeps criminis*. He did not appear puffed with an accumulation of black offences; attempts at murder and conspiracies for assassination. The jury would not forget Lawler's confession of faith. No, they would remember that though he swore on the Holy Evangelists he at present believed in the existence of a God, he yet had acknowledged the impious fact that his faith in the Trinity had been shaken. That though he had been heretofore instructed in the Protestant religion, yet he acknowledged he had been seduced from the principles of Christianity to the sceptical opinions of deism. But impiety of a much grosser nature than deism would be proved upon him, by witnesses of credit. It would be proved that Mr. Lawler had not only openly and repeatedly declared his disbelief in the Trinity, but in the existence of any of its members; that he had denied the divinity of each of the three divine persons; that his creed admitted of no deity, of no translation of the soul, but recognized only one melancholy opinion, that "death is eternal sleep;" that man, like the inanimate tree, lies where he falls, sinking to all eternity into his native earth, incapable of renovation or ascension into future life. Such was the diabolical religion, at least such had been the infamous professions of Mr. Lawler; the Atheist and approver. Such was the infernal instigation under which this unbelieving witness had acted; whose call, like that of St. Paul's, was not from infidelity to the true faith, but who like Julian the apostate renounced the precepts of the true faith to become an infidel and a

persecutor. To him may be well applied an epigram made on a similar character; on a wretch who having long professed and disseminated the precepts of Atheism, received the Sacrament, in order to qualify for a place—

“ Who now can think recanting odd,
To shun a present evil
That wretch who oft’ denied his God,
Has now denied the Devil.”

Such is the delineation of Mr. Lawler’s religious theory; let us now take a slight view of his moral practice. Out of his own mouth the jury should judge of his morality—mark his confessions in the course of his cross-examination. He had been discharged, or he had ran away, for he did not positively say which, from his first master, Mr. Robinson, on a suspicion of theft. He had confessed having taken an oath of fidelity when he enlisted, and having premeditatedly broken that oath when he deserted; of having solemnly sworn not to prosecute the unhappy deluded youths with whom he associated, and whom he had seduced into clubs, and of having perjured himself by the breach of that obligation. It was true he had not acknowledged an intent to commit murder, for when asked who fired the pistol into the watch-house in the attempt to rescue, he refused to answer that question, well knowing the consequence. But, was not that refusal a tacit confession of the crime? Was it his innocence of the charge, or his prudence to avoid punishment for the crime, prevented an answer? The jury were the judges of that, and the jury would apply this refusal to his credit. On the question of assassination he was more candid, for with audacity and composure he had coolly and deliberately stated having been one of four who had lain in wait to put Cockayne to death. So that this witness, on the credit of whose testimony the life of the prisoner at the bar depended, stood himself before the jury, self arraigned, and pleading guilty to charges of one intended murder, two perpetrated perjuries, and a premeditated assassination! Could his credit support such a weight of accumulated guilt! The act of discharging a pistol into the watch-house might, no doubt, by the ingenuity of argument, be palliated and softened down to manslaughter in case a life had been lost. It might be construed into an act of passion with malice prepense; but the intended assassination of Cockayne had none of these qualities, the intention there was blackened with the most implacable malignity, and had the fact been accomplished would have amounted to murder of the most aggravated enormity. Mark his coolness, recollect his deliberation, previous to the commencement of the diabolical deed. He was awake in the night, and, in the night he arose and marched forth armed for the purpose of assassination! Would the jury credit such a witness as this? A miscreant leprosiad with crimes, surrounded with fears for his own personal safety. A miscreant with the gallows in his front, the pillory in his rear, and his pardon suspended over his head, on condition that he should support, by his testimony in court, the information he had sworn to before a magistrate.

It may be answered, and indeed it was thrown out on a former occasion, that the jury would give Mr. Lawler credit because he was consistent. Is not every liar that fabricates a scheme of villainy for

reward, or for impunity, consistent? Is it to be presumed that a man of Mr. Lawler's docility and cunning would not corroborate, on the table, in the face of the court, what he had previously promulged and sworn before Alderman James? Every man knows the melancholy story of the unfortunate youths who suffered an ignominious death in London, from the perjured evidence of Salmon and Geoghegan. These wretches swore away the lives of their fellow-creatures, to acquire rewards given by statute, on conviction for highway robberies, and their evidence was always consistent—so was the evidence of Titus Oates and his associates, and so would the evidence of conspirators, such as Mr. Lawler, ever be found.

Mr. M'NALLY having concluded his description of the approver, proceeded to observe upon such parts of the evidence as, he said, appeared material in the case, if anything could appear material coming from the mouth of such a man; and as he thought the whole should be narrowed to what had been sworn to have passed at the meeting at Stoneybatter, he would confine himself to the facts respecting that meeting.

It had been sworn by Mr. Lawler that the prisoner had been there, at a meeting of a society calling themselves Defenders, but it did not appear that he ever attended that society a second time, a circumstance which must impress the jury with a belief that, if he had been even there, he was disgusted with their proceedings, and dropped their association. He was not, however, answerable as a traitor, even if he had been present at one meeting and saw and heard what passed, for he only concealed what he had seen or heard, without showing an approbation by a second visit, and to conceal treason except in case of an actual conspiracy to kill the King, was not treason, but only a misprision; a crime of a different species from that on which the prisoner was indicted.

The most serious part of the overt acts, he conceived, to consist in taking those oaths or obligations which had been read from the papers found by Mr. Carleton, the peace officer, on the person of Kennedy. But was there any evidence to support that overt act—was there any proof that the prisoner had taken oaths, or either of them? Not an iota of proof!—not so much as a reasonable presumption; for there was not proof that he had ever read those papers, or had even heard them read, or was present when any oath of any kind was administered. Neither was it in proof, before the jury, that the papers which lay on the table in the house at Stoneybatter contained an oath or obligation, nor was it pretended that such paper was one of those which had been admitted to be read in evidence by the court. A person named Hart, as sworn by the approver, had put his hand upon a paper that lay on the table; but the approver declared he did not hear anything that had passed on that occasion, so that for aught he knew nothing had passed, and if anything of consequence did pass, or if any thing treasonable was said, it was equally clear that the prisoner had not heard or seen anything; but it appeared he was in liquor—it appeared he was so situated that he could neither hear what was said nor see what was done.

He then urged that no intimacy had appeared by evidence to have subsisted between the approver and prisoner on any other occasion.

He had not been on the party at the watch-house when the approver was wounded in attempting to commit murder. He had not been called upon to join the conspirators who premeditated the assassination of Cockayne; in short, it did not appear he had been at any meeting but one at Stoneybatter; and there was no satisfactory evidence before the jury, even from the approver himself, that any treason was agitated at that meeting in the presence or hearing, or by the assent of the prisoner.

Mr. McNALLY now touched on the difference of the statute law in cases of high treason, in England and Ireland. In England, he observed, the prisoner would not have been put upon his defence, but must have been acquitted on the evidence given for the crown; for there one witness, though perfectly credible, as well as competent, could not affect a prisoner charged with high treason—there the legislature, jealous of crown prosecutions, and tenacious of the subject's safety, had prudently and cautiously provided, that to sanction and support a conviction of high treason, there must be two credible witnesses to one overt act, or one credible witness to one overt act and a second witness to another overt act of the same species of treason.* The Irish statute had not adopted a similar provision, and as the parliamentary law of England had no force, and he trusted never would have force in Ireland, he could not urge the English statute as an authority, though he would venture to state it as containing a principle wise and salutary, and which should have weight with the jury as being derived from the common law, which was the same in both countries. The principle was this that one man's oath was as good, in point of law, as another's, and therefore in perjury there must be two witnesses at least to convict; for the oath of the single person charged was as strong and conclusive evidence of his innocence as the oath of the person charging was of his guilt. This rule applied, with great effect, to cases of high treason, because as every man living within the realm, under the protection of the laws, owed in return for that protection allegiance to the crown, which he could not transfer or divest himself of, that oath of allegiance ballanced in the scale of justice the oath of any single witness. Every man is presumed to have taken the oath of allegiance; the jury must presume that Leary, the prisoner, had taken that oath, and that oath should not only counterpoise, but preponderate against the oath of Lawler whose credit was impeached, shaken, nay, sapped and overturned by his own confession of having broke the oath of attestation, which he had solemnly sworn, when he enlisted and promised true faith, allegiance, and loyalty to his Majesty.

When the jury took these observations into their consideration he trusted they would not convict a man upon evidence impeachable and inconclusive; evidence which could only raise a presumption of guilt. If any treason appeared he submitted it was but constructive treason†—what was construction? The best lives that England ever boasted, the greatest characters that ever served their country and supported

* See Memoir of Rev. Wm. Jackson.

† See the speech of Erskine on constructive treason. Trial of Lord George Gordon, Howell's St. Tr.

its constitution, had been sacrificed to construction. It was a boundless ocean without limits. Should a jury venture on it, they would find themselves without compass, without sail, without rudder, without chart to guide them—they would be tost by the undulation of every wave and sported with by every storm; till striking upon some sunken rock, or drawn into some whirlpool, they and their bark would be dashed to pieces, or foundering sink into a treacherous abyss! It was on certainty a jury would found their verdict; certainty resulting from the conviction of unimpeached evidence. Construction was at best a scheme of chance, a wheel from whence the properties, the liberties and lives of the most upright and honourable might by degrees be drawn at the will of the directors, till every man of worth and estimation in the country dropped off as by lottery.

Mr. M'NALLY concluded by again adverting to the heinousness of the crime charged upon the prisoner, and described to the jury the dreadful sentence and horrid execution which would inevitably succeed a verdict of conviction. It was, he said, the cruel invention of savage and barbarous times; the most severe that stained with blood the black page of the criminal code. It was the vindictive sentence of irritated and insatiate vengeance, not the punishment of pure and unimpassioned justice. It was not confined to death, but extended to torture, mutilating and disfiguring the dignified image of God, after whose form we were taught to believe man was made. But it went further than even the destruction of the offending object, it visited the sins of the father upon the innocent children, by tainting and corrupting the current of their blood; by marking them like the devoted offspring of the first murderer, turning them abroad wanderers, outcasts and vagrants over the face of the earth.

Samuel Galland, sworn.—Examined by Mr. M'NALLY.

Q. Do you know William Lawler, *alias* Wright? A. I know him by the name of Lawler.

Q. From the general character which he bears in life, do you consider him to be a man, who ought to have credit upon his oath, giving evidence in a court of justice? A. I do not.

Cross-examined by Mr. PRIME-SERJEANT.

Q. Where do you live? A. In Crane-lane.

Q. Of what business are you? A. I am a grocer, but served my time to a hair-dresser.

Q. How long have you lived there? A. Since I was two years old. I am near twenty-one years there.

Q. How long have you been a grocer? A. Two years.

Q. Were you ever a member of a society? A. I was of a reading society.

Q. What was the name of it? A. It had no name, it was so young, before I left it.

Q. What did you read? A. The papers of the day: Chambers' Dictionary.

Q. It was not politics you read? A. Not at all. In the course of conversation it might; but it was not the principal part.

Q. Was it not the principal motive for introducing those clubs? A. Not when I was a member of it.

Q. When was this club established? A. Some time after Lawler came from England, he asked me, was there any society in Dublin? I said, No:—He said, there might be some reading society, and he asked me to become a member, and my brother, and others.

Q. Were you ever a member of any other society? A. Never.

Q. Was not your brother a member of the Philanthropic? A. I believe he was.

Q. Was not he a member of the Telegraphic? A. No; I believe not.

Q. You say you are a grocer? A. Yes.

Q. You deal in spirits? A. No: tea, and sugar only.

Q. Was your brother a member of that society which expired so soon? A. He was.

Q. Did you ever hear of such a society, as Defenders? A. I have heard of them as a body, but not as a society.

Q. Do you not believe such a society exists? A. I believe they exist, when men have fallen sacrifices to it.

Q. What do you believe are their designs—were they not criminal? A. I cannot say—I should think they were criminal.

Q. Have the goodness to tell us, why you did not continue in the society, as well as your brother? A. I had not time, and I deserted it, before it was dissolved. They were scrambling about a chairman and secretary, and party matters, and there was no knowledge to be acquired, but noise and confusion.

Q. Was Burke a member of that society? A. He was.

Q. Can you recollect the names of any others? A. Not many. There was myself, my brother, Lawler, an acquaintance of Lawler's, one Strut, in short there was not many—twelve or fourteen.

Q. Did you know John Le Blanc? A. I did.

Q. Was he a member? A. No.

Q. How long have you been acquainted with him? A. Some time after Lawler came from England. It was through Lawler, I became acquainted with him.

Q. Did you know Leary? A. No.

Q. Do you know Dry? A. No.

Q. Did you know Weldon? A. No; I never saw him until his trial.

Q. Do you know Brady or Kennedy? A. No.

Q. Did you know Coffey? A. I did know one Coffey.

Q. Did you know Flood? A. No.

Q. Clayton? A. No.

Q. Lewis? A. No.

Q. Hanlon? A. No.

Q. Hart? A. No.

Q. You knew only Coffey? A. That was all, and my acquaintance with him was very slight.

Q. You were summoned upon the last trial? A. I was.

Q. Tell how you came to communicate what you knew of Lawler? A. I told it to Mr. Bates.

Q. Who is he? A. A hatter in Parliament-street, who told it to the attorney, I believe, who summoned me.

Q. Was Bates a member of any of the clubs? A. No.

Q. How came you to know that Lawler was to give evidence?
A. I did not know, but I mentioned that I knew the man, and what his character was.

Q. You thought Lawler was under a heavy charge, and it was cruel in you to oppress him? A. I did not, but said, I was sorry for him. I told Bates again, when he heard that Lawler was turned approver.

Q. You wished Lawler well? A. Yes.

Q. And then when Bates told you that Lawler was turned informer, this man whom you wished well, was such a man as was not to be believed? A. Bates sent to me, and I went to him, to Castle-street, where he lives, he asked me how long I knew Lawler, I said, for many years. What do you know of him?—I told him all I knew about him, and then I was sent for by Flood.

Q. Who is he? A. An attorney. And it is by that I am obliged to tell what I have.

Q. Have you a good many friends that you are anxious for, whom you would not believe upon their oaths? A. No.

Q. Have you any other friend, who ought not to be believed upon his oath? A. I believe I have.

Mr. M'NALLY.—My lords, I beg leave to suggest a question. Whether the witness ever had any conversation with Lawler, respecting his principles of religion? A. I had.

Q. Tell the jury, what it was? A. At his first coming from England, I perceived he was a Deist, and denied that Jesus Christ was the Son of God. I was shocked at it. He said, the only way to become reconciled to it, was to read upon it. I said, it was a shocking piece of business. But, said he, I will go further, for I deny the existence of a God. Where, said I, do you think your soul will go after you die?—He answered, nowhere.

Q. (By the Court.—How long did you continue in the society after this? A. Not long.)

Mr. PRIME-SERGEANT.—It was after you were shocked by these irreligious opinions, that you were anxious about him, and went to Bates? A. His belief is nothing to me: in his own breast let it lie.

Q. You kept him company after this? A. He came to my place, but I never went to him.

William Ebbs, sworn.—Examined by Mr. M'NALLY.

Q. Where do you live? A. In Cathedral-lane.

Q. How long have you known Lawler? A. About twelve months.

Q. Where did he reside in that time? A. In my house: he took a lodging from me.

Q. Do you know of Lawler's having anything concealed in your house of a remarkable kind? A. Not till after he was apprehended.

Q. Had you occasion to make a search in his apartment? A. On my coming home to my breakfast, my wife told me, she saw Mrs. Lawler go into the yard, and conceal something in the dirt-hole—I went out immediately, and found two leathern bags, containing sixty

musket balls. I never had a bad opinion of him, till I saw them, and I was then shocked.

Q. If Lawler swore that he had no ammunition or balls, would he swear true? A. No, certainly he would not.

Q. Have you ever conversed with Lawler upon the subject of the Deity? A. No, I had very little communication with him, though he lodged with me.

Q. You have heard of his character? A. I have.

Q. From what you know of the general character of Lawler, is he a man that ought to be believed by a jury, giving evidence in a court of justice in a capital case? A. I would not believe him upon his oath.

Q. Were you ever a member of those societies? A. Never.

Q. Were you solicited to become a member? A. I was.

Q. By whom? A. By Lawler.

Q. You did not become a member? A. No, I did not choose it: I asked him the intention of it; he would not tell me till I was admitted. He applied to me for a room in my house, for a society to meet in, and I refused. I did not like him after that. His wife gave me a pistol loaded with powder and ball.

Q. You have been summoned on the part of the crown and by the prisoner? A. I have five or six times, every day.

Q. Who summoned you to attend Weldon's trial? A. The crown, and I was not called upon.

Cross-examined by Mr. ATTORNEY-GENERAL.

Q. How long did Lawler live in your house? A. Twelve months since he took the lodging first.

Q. When did he go to live with you last? A. Five or six months, before he was taken up.

Q. During that time he followed his business? A. He did.

Q. And maintained his family? A. He did.

Q. And conducted himself well? A. For a time he did.

Q. He was a member of those societies? A. I believe so. He told me so.

Q. He was an active member? A. I believe so, by his asking me.

Q. You heard his testimony this day and you were asked, if he had sworn, that he had not balls or powder in his room he would have sworn false. But if he did not so swear, but was asked, had he ball cartridges would you disbelieve him? A. There was both powder and ball in the pistol.

Q. Do you know anything of rescuing a prisoner from the watch-house? A. I heard of it, he being cut.

Q. Was not that a long time ago? A. It was.

Q. And if he swore, that a long time ago he had no cartridges, and a long time after, you found balls in the house or the room, would you think you ought to conclude, he had perjured himself? I need not press you for an answer.

Q. At the time he was arrested, would you, if asked, say, that he was not a man to be believed? A. I would for this reason——

Q. Give me your reason? A. I would. He told my wife several things from which she said he was a dangerous man. He never kept

the Sabbath, for which I determined to get him out of my house. When I came down clean for church, I used to see him working.

Q. Are there not many honest men, who work upon Sunday? A. There may : but I was asked my reason for not believing the man, and I assign that as one among others.

Q. At that time, you had no other reason? A. I had.

Q. Except what your wife told you? A. No.

Q. You ground your opinion upon what you heard this day? A. Not by any means.

Q. You can have no interest in this business? A. No, indeed, for I have lost.

Q. By this man? A. No, but by loss of time here.

Q. Then the evidence you give is not founded upon what he has said this day? A. No, I had this opinion some months ago.

Q. How long did he work upon the Sabbath from the time he came to lodge with you? A. Occasionally.

Q. How long had he remained? A. Seven, or eight months.

Q. And why did not you turn him out? A. I could not, because he paid his rent regularly.

Q. Did he work from the time he came? A. Occasionally he did, and I gave him warning ; he took the lodgings for a year.

Q. But he did not stay a year? A. He did not, but his furniture is there still, and his rooms are locked, what can I do with them?

Q. Did you speak well of this man, within this month? A. As to his pay, I might, and keeping good hours.

Q. Did you not speak well of him within these six weeks? A. Not to my knowledge.

Q. Upon what occasion, did you say he kept his hours and paid his rent? A. I do not recollect. There were many called to my house, but I was not at home.

Q. When did you first tell this, that he was not to be believed on his oath? A. I do not recollect, that I mentioned it to any one, except sitting in court the former day.

Q. Did you never converse respecting him, after his being arrested? A. I do not know that I did.

Q. And yet it should seem very natural that you should converse about it. When did you first hear that he was a witness? A. I did not hear it till after Weldon's trial.

Q. Did you never hear of it till then? A. I had heard of it, but was not certain of it.

Q. Did you not mention it then? A. No, I did not like to mention it, because I thought it rather disrespectful to myself to have had such a man in my house.

Nicholas Clare, sworn.—Examined by Mr. M'NALLY.

Q. Where do you live? A. No. 39, Townsend-street.

Q. What business are you? A. A tailor.

Q. A master, or journeyman? A. A master.

Q. Do you know William Lawler? A. I do.

Q. How long? A. About fourteen months ; the beginning of the winter 1794.

Q. Have you ever had any conversation with him about his

principles of religion? A. In the winter of 1794, I belonged to the Telegraphic Society; I was at it three or four times, and there was a meeting at which they talked of the *Age of Reason* by Paine, some recommending it, others approving of it. Lawler said, I go further than he does, for I deny any part of the Trinity, either Father, Son, or Holy Ghost.

Q. How long were you a member of that society? A. I quit it immediately upon seeing there was a fellow of this opinion in it.

Q. On your oath did you quit it upon hearing the opinions divulged by Lawler? A. On my oath I did.

Q. From the knowledge you have of his character and opinions, do you consider him a man to be believed upon his oath, giving evidence in a court of justice? A. I do not.

Q. Give your reason. A. I should think a man, who denied the three persons of the Trinity ought not to be believed upon his oath.

Cross-examined by Mr. SAURIN.

Q. You were of that society? A. I was.

Q. When did you quit it? A. October or November 1794.

Q. Lawler is a much younger man, than you? A. I do not know; I am about 32 years of age, and I do not know his.

Q. Did you read that book? A. No.

Q. Did you read any other? A. I did, and intended to make them a present of a Dictionary of arts and sciences, I thought it such a society; but when I found he promulged such opinions and being a leading man, I quit it, and was glad I did not give my books to them.

Q. Was Burke a member? A. There was a Mr. Burke.

Q. Was Galland there? A. I do not know him.

Q. Had you any other acquaintance with Lawler than what arose from meeting him there? A. Never.

Here the evidence closed on the part of the prisoner.

George Cowan, sworn.—Examined by Mr. ATTORNEY-GENERAL.

Q. Do you know Lawler? A. I do.

Q. How long? A. Four or five years.

Q. Is he a man to be believed upon his oath in a court of justice?

A. I never heard of an opinion to the contrary till this trial.

Q. Do you recollect his going to you in August last? A. I do.

Q. Tell the jury upon what occasion was that? A. He came to me on Monday morning, 23d or 24th of August, and seemed to be a good deal agitated. He came into the parlour; he shut the door of the parlour, and then opened his mind to me.

Q. What intercourse had he with you before that? A. After his coming from England, he came to work with me; he staid but a short time, when he went to Gallagher's, South Great George's-street, he worked in Gallagher's house and in his own lodgings. I do not believe he worked for any one else.

Q. What passed when he shut the door? A. He told me that he wished to open his mind upon a matter that concerned him very much; that there was a conspiracy against the Protestants of this country, which he wished to make known for my advice, what to do. (Here Mr. Cowan asked, was Lawler within hearing, and being

answered in the negative, he proceeded.) He then told me of the societies he had been in. I do not recollect, that he mentioned the London Corresponding Society. He mentioned the others, which he mentioned here. I asked him, was he sworn a Defender? He told me, he was a sworn Defender, and there told me almost word for word as he has done upon the table the two days he has been examined. Upon my word, he has adhered to what he told me very closely in the two examinations.

Q. Was there any one present? A. There was not.

Q. Could any one hear? A. There could not.

Q. Why not? A. Because there was no person present.

Q. Was the door shut? A. It was; he shut it himself.

Q. What advice did he ask—did he make any proposal? A. When he heard the Protestants were to be put to death, that lay very heavy upon his mind, he was a Protestant himself—in order to prevent the mischief, if possible.

Q. Did he speak of any intention he had with regard to himself? A. He did not.

Q. Until now you never heard anything to impeach his character? A. Never.

Q. Do you know Ebbs? A. I do.

Q. Had you ever any conversation with Ebbs? A. I had.

Q. When? A. Shortly after Lawler was apprehended.

Q. Upon what occasion did Ebbs appear to know that Lawler was charged with high treason—or that he was a witness? A. He appeared to me to know that he was charged along with the rest.

Q. How did Ebbs express himself of the man? A. He represented him as a very honest industrious creature; that he would pay his rent the very day it became due; that he and his wife appeared extremely decent. I went up to the room to look for him before he was taken up.

Q. Ebbs did not impress you with any opinion injurious to Lawler and his family? A. No, but the reverse; he told me he was an honest industrious man, and never was more surprised in his life.

Cross-examined by Mr. M'NALLY.

Q. Ebbs said he never was more surprised than when Lawler was taken up a Defender? A. He did.

Q. Did he tell you of anything bad, which he knew of Lawler? A. No.

Q. Did he then tell you of what he found in the dirt-hole? A. No.

Q. If you had a lodger of whom you had a good opinion, and that he left bags of balls and slugs after him, would you not be surprised? A. I must tell you further. On Friday last, I saw Ebbs; he came to me in our hall of which he is a free-brother; he said, he wished to have the furniture taken away, as he was afraid his house would be pulled down by the mob. Neither at that time, nor until this moment did I hear him say anything against the man.

Q. The day of the conversation in the hall, was the day you returned yourself a common council-man upon a minority of votes?

A. It was the day of the election.

Q. That election has been set aside? A. It has.

Q. Would you not change an opinion of a lodger, if you found ammunition after him? A. I might.

Q. Do you not think Ebbs had a right to change his opinion? A. No doubt but he might.

Q. Do you not think he was right? A. Certainly.

Q. When you spoke to Ebbs, did you say anything respecting religion? A. I did not.

Q. Then the character which Ebbs gave of Lawler was confined to the points of industry and payment of rent? A. It was. He never mentioned his religion to me.

Q. Do you not think a lodging is as necessary to a rogue as to an honest man? A. I believe so.

Q. And therefore, it is necessary for a rogue to pay his rent, to secure his lodging? A. It is.

Q. What Lawler told you was consistent with what he told upon the table? A. He has told a little more here.

Q. Nothing less? A. No.

Q. If a man laid down a plan, which he intended to support by evidence, would it not occur to him, as the first thing to be consistent? A. It might.

Q. Did you never hear of men being hanged upon the consistent evidence of a conspiracy to convict them, for the purpose of procuring rewards? A. I never did hear of it.

Q. If you were of that malicious disposition, would you not compose a train of lies to support your story? A. I do not think it easy to support a train of lies.

Q. But if a man gave information of certain facts before a magistrate, though that were false, would he not endeavour to support it before a jury? A. He ought to do it, if they were truths.

Q. When a man swears to a lie in one place, it is his object to make it appear as like it in another? A. I cannot say.

Q. Do you not believe that a man, who would swear to one lie in one place, would swear to another in another place? A. I should suppose so.

Q. If he told a lie before the magistrate, would he not tell the same lie here? A. I think so.

Q. If he contradicted his informations, would he not be liable to an indictment for perjury? A. No doubt of it.

Q. If you had a good opinion of the consistency of Lawler, why did you ask, was he within hearing? A. I'll tell you my reason, because I should be happy to tell everything with respect to the prisoner, as to Lawler. Lawler's wife came to me and told me, that Ebbs wanted his rent—this was after Lawler was apprehended. I desired Mrs. Lawler to send Ebbs to me, and I would satisfy him. The reason I did this was, that Lawler should not understand, that anything was done for him in consequence of any prosecution. I gave money to pay Ebbs the rent, and Ebbs was paid the rent, and he continued the furniture ever since.

Q. Then there have been pecuniary services for Lawler's family? A. So far as that.

Q. How are you to be re-imbursed? A. I could not think of letting him want after the information he gave me.

Q. It was from motives of charity in your own humane breast, that you advanced the money? A. I did not say any such thing.

Q. Do you expect to be re-imbursed? A. I do.

Q. Do you expect Lawler will? A. I do not know but he will.

Q. By what means? A. By his livelihood.

Q. What! do you expect that he will be let to live in the city of Dublin? A. I do not see what is to hinder him.

Q. Then you do not see as far as I do. Lawler has other expectations? A. I believe not, because in the presence of Mr. Kemmis, he told me, he never expected anything.

Q. Do you not believe he is acting in expectation of his Majesty's pardon? A. For what.

Q. For his offences? A. I do not know anything of them.

Q. Do you not believe he expects a pardon? A. I do not believe it.

Q. I ask you again; if he be guilty of the crimes, that he says he is, do you not believe that he expects a pardon?—Do you not believe he is guilty? A. I believe he is, and I tell you why. When I went to England, in 1792, I got an order to pay him a sum of money—£10. I went to look for him, and found he had changed his name: he came to me in the evening after, and told me he had enlisted, which was the cause of changing his name; and I went afterwards to the same place, and the woman told me, there had been a party of soldiers looking for him.

Q. You had £10 to advance him? A. I had.

Q. This was in London? A. It was.

Q. You knew him there? A. I did.

Q. By virtue of your oath do you know what brought him back?

A. No.

Q. You never encouraged him? A. No.

Q. You employed him upon his return? A. I did.

Q. He went to you as his best friend? A. He was glad to work with me, as I have some of the best workmen from England.

Q. But he staid a short time? A. Gallagher inveigled him from me.

Q. What was the £10? A. George Drury was guardian of this boy and another, and was owner of certain rents. There was £50 a-piece coming to the boys; and £40 had been paid to this man, and £10 remained due. Drury requested I would pay him in London, which I did.

Q. If Lawler or any other person had told you he did not believe in a God, and afterwards told you he had been guilty of the offences he mentioned here, would you consider him to be a man to be believed in a court of justice? A. I never heard anything against him until this trial.

Q. Do you consider that to be answer to my question? Why do you evade it? A. What is it?

Q. If a man told you he disbelieved the three persons of the Trinity, and confessed the crimes this man has told, would you take him to be a man who ought to be believed upon his oath? A. I must confess it would shake my credit of him. Upon getting the information I did I thought it my duty to myself, my country, and my king, to let government be acquainted with it.

Evidence closed.

Mr. Baron GEORGE.—**Mr. M'Nally** as you are the single counsel for the prisoner, you are at liberty to observe upon the evidence if you choose, in addition to what you have already argued.

Mr. M'NALLY.—My lords, I feel myself much indebted to your lordships. I will just make one observation, which I omitted before. In all the evidence against the prisoner, with respect to conversations between him and Lawler, they are always stated without the intervention of a third person—all the conversation in Blackhorse-lane was private—without the privy of a third person who could disprove the statement. This is the only remark I wish to make, as I will not trouble the gentlemen of the jury further, although I well know the ability of the gentleman who is to reply to me. But I have seen the jury take notes of the evidence upon which they will decide, not upon the arguments of counsel. The jury are the judges of the life and death of this unfortunate prisoner—charged with an offence of prodigious weight.

Mr. SOLICITOR-GENERAL spoke to evidence on the part of the crown. He said, that the marked attention of the jury, during the progress of the trial, and the laborious and anxious situation in which their lordships had been placed, during the course of the longest session of Oyer and Terminer that had been remembered in Ireland, would render him unjustifiable, were he not to condense his observation within as narrow a compass as possible. He said, that it would be his duty to impress two points upon the minds of the jury. 1st, that the existence of a treason, such as was charged in the indictment, had been established beyond controversy. 2dly, that there was sufficient evidence to convince every reasonable man that the crime was brought home to the prisoner at the bar. As to the first point, it was a lamentable and notorious truth, which the evidence confirmed, not only by parol proof, but by written documents, found upon the associates of the prisoner, and not attempted to be controverted, that this rank and foul treason has not only existed, but had burst forth into acts of most alarming outrage through many parts of the kingdom; and upon the present occasion, we trace it under its various and mysterious modifications to have had the same actuating contagious principle which has diffused itself from France through those seminaries of political mischief and disease, which, under the appellation of societies, clubs, committees, and defenders, urged on by French missionaries, have infected and endangered both Great Britain and Ireland.

As to the rules of law, matured as they are by a series of judicial determinations in the various cases that have been adjudged upon the subject of treason, and the stat. 25 Ed. III. what you, gentlemen, have heard from my learned friend (the Attorney-General) and what you will hear from the wisdom and authority of the Court, render it unnecessary for me to detain you upon that part of the case. The meeting, associating, consulting, and confederating with a body of men, leagued and united under the obligation of a deliberate oath, to be true to the French Convention, and to assist the forces of the French (at open war with the state) with an armed confederacy, in case they should invade the kingdom; the enlisting of men into the conspiracy, and the nightly arrangements for numbering and giving

officers and discipline to the body, the subscribing money to purchase ammunition, the plundering the peaceable inhabitants of the country of their arms, for the avowed purpose of giving assistance to the invaders, amount in themselves to a direct invitation, and encouragement to the enemy to invade these, his Majesty's realms; and are plain overt acts of the treason in the two counts of the indictment, namely, the compassing of the King's death and the adhering to his enemies. Now in the body of evidence brought to substantiate the charge, there is one prominent feature, which arises out of the oath and catechism, which I consider together, as if they were one instrument, each part throwing light on the other, and to which I call the particular attention of the jury; as from the internal and immutable evidence arising from that instrument, from the manner in which it appears to combine the principles of the confederacy, from the authenticity which it has received, not only from the circumstantial evidence, by which it was identified, but by which it was traced to the fob of that associated Defender, on whom it was found, by aid of the information of the principal witness, Lawler. It constitutes a most important branch of the case, not only as an irrefragable proof of the treason which teems through every line of it, but also that from the previous description given by Lawler of its contents, and of the person upon whom it was found, there is the strongest degree of corroborating credit given to the whole testimony of that witness.

Of the instructions, and signals, which accompanied that initiating, that ceremony of swearing, you have had a minute description, and Lawler has proved that the prisoner was well acquainted with those mysterious signals. He has also told you, that the first meeting of Defenders, at which he saw the prisoner, was at Stoneybatter, and that he, the prisoner, then appeared to him to be somewhat in liquor. And here in conformity to those principles of moderation, and upright candour which have distinguished the conductor of the present prosecutions, I am free to acknowledge, that the prisoner's being somewhat in liquor, is a part of the evidence from which I ought not to draw your attention, and from his manner of saying it. The witness in mentioning that fact, shews that his mind is divested of any malevolence, towards the prisoner. I will say, however, that if inebriety was to be an excuse for outrage, there would be 99 atrocious criminals in 100 of the lower order of the people of Ireland, who in truth, might plead it in bar of their being convicted. That intoxicating drug which is so unhappily and universally made use of in this country, is the constant preparatory to everything that is desperate, amongst those, who may not be sufficiently susceptible of being inflamed by the writings of the illustrious Thomas Paine, whose doctrines an ingenious man has aptly called, the whiskey of infidelity and treason. At that meeting at Stoneybatter, which I have mentioned, Hart, who is proved to have been invested with the authority of a committee-man, in the presence of the whole company, expostulated with a person who was just introduced and appeared reluctant to be sworn, and who desired to know, what was the object of the engagement, to which Hart replied, in a loud voice: "The object is to take arms from those that have them, that we may assist the French when they land." And at the same meeting, Hart commanded all present, to

lay their hands upon the table, and to engage on the virtue of their Defender oath to attend on a future evening, that they might proceed to plunder a house of arms.

Upon a subsequent interview between the witness and the prisoner; he, the prisoner, relates the circumstances of a robbery, that was committed by him, accompanied by Hart and others, pursuant to their engagements; and the manner of breaking the house, the taking of arms of a particular description, the ringing of a bell, during the robbery, by some person within, and the exact geographical situation of the house, are all related by the witness, from the account the prisoner gave him. And the owner of the house that was robbed, has been examined, and has confirmed that account in most of the essential points: as to the arms taken, the bell ringing, the site of the house, and the particular time and manner of the robbery, so as to leave no room to doubt of the prisoner being involved in the transaction.

The witness, Lawler, has undergone the most sifting scrutiny of examination for two days, in the course of this, and a former trial. That he was to have been a principal witness, has been publicly known, and the course of the cross-examination, and the evidence adduced by the prisoner, shew to demonstration, that the prisoner's counsel have been thoroughly aware and instructed of the evidence for the crown, branched out as it has been into such a variety of place, time and circumstance. It is next to an impossibility, that any fabricated tale of transactions so recent, involving so many persons, and the series of so many facts could have escaped detection, or that anything but consistent truth could have supported itself, without a contradiction, either from the witness himself, or from some other quarter. But nothing of that kind has been attempted or argued. It has been indeed attempted, to shew however, that the witness is divested of all sense of religion; that he has been involved in many crimes, and that as he is an accomplice in the crime, which he now proves against another, he deserves no credit himself. Of the three witnesses, who have been called by the prisoner, the two first, after swearing to the irreligious sentiments of the witness, have acknowledged that they themselves continued long in the same political societies with the witness, who had come recommended from the London Corresponding Society, a philanthropic admirer of that same Thomas Paine, whose works were their principal study, and you, gentlemen of the jury, are the best judges which of the witnesses have been the most pious of his disciples. But this, you cannot forget, that after the time when Lawler was supposed to be arrested, those two witnesses enquired for him, with the utmost solicitude of regard and friendship for their old associate. But, Lawler afterwards became a penitent and witness for the crown! Whilst he was an unreclaimed criminal, he was their friend; but when, by his discovery, he made atonement, he is infamous in their eyes. *Et hinc illa lachrymæ.* Whilst he was a Defender, he was virtuous and a man of truth; but now he has revolted from them, and is an infidel. As for the third witness for the prisoner, it has been proved, that under the same impression as the other two, when first resorted to, and asked for the witness's character, he then represented him, as a most honest

and industrious creature. This appears, from the evidence of Mr. Cowan, who was called to the credit of the witness, Lawler, after his credit had been thus impeached; for it is remarkable, that this is the only defence that has been attempted. Gentlemen, you have all heard Mr. Cowan, and you know him, and if anything could raise a man of his known worth in estimation and merit amongst his countrymen, it would be his conduct on the present occasion. Mr. Cowan has told you of the sedulous industry of Lawler, who worked for him at his trade. He has told you of the voluntary disclosure made by him, at a time when there was not a shadow of accusation against him. He has mentioned to you his motives of conscientious remorse, and his horror of intended massacre, and he says, that he has been uniform and consistent from the first moment of his discovery; and as an instance of his present sentiments of Lawler, he has said that he (Cowan) would employ him hereafter at his trade.

But the learned counsel then interrogated in a tone of some significance. "What, sir, do you think that Lawler will be let to live in Dublin?" "If so," says the counsel, "I think I can see further than you do." Good God! can any advocate be so hardy as to insinuate that a witness who comes forward in aid of public justice, must do it at the risk of his life? Are we come to this? Is terror to be hung out to prevent the investigation of truth? And will any man dare, in the face of this tribunal, to raise such a suggestion?

Here the court observed, that Mr. M'Nally was not in court, which they regretted, for though the expressions made use of by him had not excited the same ideas in their minds as in that of the Solicitor, yet from the sense that might be put on them, it was necessary the words should be explained.

MR. SOLICITOR-GENERAL.—I did not perceive that the learned gentleman had gone out since I begun. I ask pardon for mentioning, in his absence, what I had rather he was present to explain.*

It has been argued, that as this case must turn upon the evidence of the single witness, who is an accomplice in the crimes of which he accuses others, that no jury should credit him, and that no court should sanction a conviction upon his evidence. I am well aware that such an opinion was formerly contended for, and that even the competence of such a witness has been strenuously argued against. But since the case of Charnock,† who was tried soon after the Revolution, before as great judges as ever sat in Westminster-Hall, no attempt has been made to support such an opinion, and capital convictions upon the evidence of a single accomplice have, in some late instances, been

* Mr. M'Nally had left the court for the purpose of taking some refreshment, and upon his return being informed of what had passed, explained, and said, his meaning was that Lawler would be so covered with infamy that no person in Dublin would employ him, and therefore he must seek his bread elsewhere. This explanation was deemed amply sufficient by the court, and the matter terminated to the satisfaction of all parties.

† Charnock and others were indicted for conspiracy to assassinate Wm. III., and the chief witness against them was Captain Porter, who was himself implicated in the plot. He was the prototype in turpitude of Captain Armstrong of a later period. Charnock insisted on his incompetency, but the court ruled that he was a competent witness. Burnet seeks to implicate James II. in the design. See 12th Howell St. Tr. 1378; and also see Burnet, 2 vol. p. 171.

sanctioned by all the judges of England as reported by Leach.* If it were not so, many dark and dangerous crimes would go unpunished; for the perpetrators of dark crimes are seldom known by any but the accomplices; and more so in this country than any other, where nocturnal outrage has become familiar, and where convictions in most instances could never be had through any other means than the discovery of accomplices. And although a *dictum* to the contrary of the opinion which I maintain may have derived new force by what has lately fallen from an authority which every man must venerate, I will take the freedom to say, that upon principles as sound and as just as ever have been adopted in the law of evidence, and the investigation of truth, that a jury may be well warranted to find a verdict, and judges well warranted to sanction a conviction, even upon the evidence of a single accomplice.

But this is not a case resting upon the evidence of a single accomplice; for exclusive of the intrinsic weight, and consistency of his evidence, here is a number of collateral, corroborative facts, arising from the testimony of others, as to the finding the oath in the box of Kennedy, where Lawler had previously told it to be—the uniform relation of the facts to James and Cowan, and the detail of the robbery of Finegan's house of the arms.

Besides, that no general and unqualified remark can attach upon the credibility of all accomplices. There are various gradations and shades of criminality that might tend to discredit, but neither the laws of God or man preclude the hope of exculpation by repentance, towards which a fair, voluntary, and explicit disclosure of his guilt is the first step to gain credit and reception to the penitent. And see how much more strongly this argument will hold in cases of treason than any other. It is of the peculiar essence of that crime that the intention of the mind, manifested by overt acts, indicative of the intention, shall be a completion of the guilt. But evil "into the mind of man may come and go." And no one of sound sense will say that the man whose deluded mind had been betrayed into such overt acts, who took an early opportunity to revolt from his associates before they accomplished their horrid purpose, and from a principle of remorse disclosed and prevented the completion of the mischief, shall, in point of moral turpitude, be deemed as infamous as the man who comes with his bloody hands to relate the murder which he had assisted others to commit.

There is one other striking feature of this case, that in my opinion, goes strongly to set up the credit of Lawler, and to attach criminality upon the prisoner and his associates. For it appears that the instructions from whence the cross-examination has been furnished could not have been derived from any other source but a direct and intimate privity and participation in all that criminality which is imputed to the witness. Thus we have it from the cross-examination, that "Paine's Age of Reason" was the *vade mecum* of the societies; that

* The case referred to is the King v. Atwood and Robbins; 1 Leach Crown Cases, 464. They were found guilty on the testimony of an accomplice, and Judge Buller took the opinion of the twelve judges who held the conviction right. And see King v. Crowder, 1 Leach 478; Jordaine v. Lashbrooke, 7 Term R. 609; King v. Jones, 2 Camp. R. 132.

the witness was the person best armed at the watch-house and at Stoneybatter. From the cross-examination you have it that the witness was employed by Le Blanc, the Frenchman, who has appeared a principal actor amongst the Defenders, as well as leader in a conspiracy to put Cockayne out of the way before Jackson's trial. Who is it that has heard what this cross-examination has brought out that does not believe the men in the dock were privy to the whole, and that does not stand appalled at the horrid work that midnight treason has been hatching? And who is it that has heard the learned counsel ask such questions from the secret cabinet of his instructions, that is not convinced that privy and participation have furnished those examinations, and linked traitors together through every stage from that society in which Lawler's mind was first corrupted down to the lowest Defender, that has been the desperate instrument to carry into effect the most alarming system of assassination, treason, and rebellion.

These, gentlemen, are circumstances, which, from their nature, could never have been revealed by any man that had not shared in their criminality; and being brought out by the prisoner, by their collision, they throw a light upon the whole, and flash conviction upon the mind of every man that heard them.

And now, gentlemen, give me leave to congratulate you and the country in which we live, however painful this enquiry has been, that after the irrefragable proof which we now have of the co-operation of French missionaries with the promoting of treason and sedition at home, there yet remains that fair and impartial appeal to justice, which the prisoner, or those who have involved him, could not find in any part of the world that is not blessed by the British constitution—that constitution which they have endeavoured to destroy. In order to rescue the deluded from their guilt, by timely example—in order to save us from the degrading supplication to military justice.

In order to save us from these horrid butcheries, which have deluged so great a proportion of Europe in blood, I trust that by a conscientious discharge of your duty, you will give your country cause to look up with veneration to the trial by jury.

The jury retired for one hour, and brought in a verdict—Not Guilty.

WEDNESDAY, December 30.

Clayton and Cooke were brought up to be tried, when Mr. Attorney-General moved to postpone their trials; it had appeared upon the former trials, said he, that there are persons wicked enough to take away the lives of witnesses. One of the witnesses who was to prosecute those prisoners does not attend, and Mr. Cowan, another witness, been attacked with the gout in his stomach, and cannot attend.

Mr. McNALLY.—I have a doubt how far the court has any discretion under the *habeas corpus* act, to postpone these trials.

Mr. ATTORNEY-GENERAL.—I admit, that if no indictment be found the first session, after committal, the prisoner must be discharged; and if one be found, and he is not tried the second session, he is to be discharged. But the act is silent as to the right of being tried. Then, my lords, I leave it to your discretion. Upon

the *habeas corpus* act, the right of trial remains as before. The prisoner may be discharged, but they are still liable to be tried.

COURT.—If the prisoners presented petitions upon the first day of the session after their committal, are not tried on the second commission, they are entitled to be discharged.

MR. ATTORNEY-GENERAL then addressed the court, and the bystanders, in order to have it fully understood by the prisoners and the public, that though the persons now in custody should be discharged from imprisonment, yet the prosecution was by no means given up, but would on the contrary remain in full vigour and be carried on as soon as the King's witnesses should be forthcoming. He then descanted on the causes of those enormities which had brought the peace of the city and country, the property and lives of the public into the very imminent danger in which they had so lately been, and from which he hoped that the proceedings of this commission would secure them. Those evils he attributed to the very relaxed state of morality—the extreme and culpable inattention of masters and fathers of families to the manners and conduct of their children, and to the growing and alarming prevalence of irreligion and infidelity, which wherever they became general, destroy public happiness and public safety, and loosen all the bonds which hold society together. As one instance of culpable neglect in the public to the morals of the rising generation, he mentioned the conduct of those many masters who are become too proud to let their apprentices sleep in their houses. It was a known fact, he said, that apprentices now were generally sent to lodge in other houses than their masters, and in that profession with which he was most nearly connected, that of an attorney, there were only two men in the city of Dublin who kept their apprentices in their own houses. The natural consequence of this was, that boys at a very early age became fit subjects of those wicked men to work on, whose object was to remove every religious and moral principle from the mind in order to make way for those abominable doctrines which they wished to inculcate. He was not yet become a very old man, and yet he was old enough to remember a time when fathers and masters kept their children and apprentices at home, and taught them to pass their vacant evenings in some innocent amusement—now the evenings and Sabbath were devoted to clubs and societies, where folly was taught to hatch treason, and imbecility to plot massacre. To prevent effectually these dreadful crimes, which it was now fully proved had been attempted, the public must exert their own powers; the master and the father must again become the guardian of his servant and his child's innocence; and in order effectually to preserve that innocence, the best way would be found to guard them against the temptations and the opportunities of vice. Much pains had been taken, he said, to misrepresent to the public what passed in that place—it had been attempted to throw such a degree of odium on the King's witnesses, as should induce the public to believe their testimony insufficient to convict men charged with secret and most enormous crimes. It was true, indeed, that the witness on a late prosecution had been proved to be a man who had been guilty of very atrocious offences, but by whom can men that have committed crimes in secrecy ever be convicted but by accomplices? If men of purity

and innocence only can convict in such cases, crimes the most dangerous to the public must for ever pass unpunished.

Cooke, Clayton, Turner, Flood, Hanlon, and Clarke, were then discharged from their imprisonment.

Thomas Dry, who had been out on bail on a charge of being a Defender, was called, and appearing, he was discharged on his own recognizance of £50.

Mr. ATTORNEY-GENERAL said that the principal witness against Oliver Corbally, charged with high treason, had absconded. The crown therefore would not produce any evidence against him.

A jury was then impannelled, to whom Oliver Corbally was given in charge, and acquitted for want of prosecution.

James Weldon, who had been convicted, was now ordered up for sentence. His indictment was read, and he was asked, what he had to say, why judgment of death should not be pronounced against him?

Mr. M'NALLY.—My lords, I shall humbly submit to your lordships, that, the judgment in this case ought to be arrested. Each count in an indictment is in the nature of a separate indictment, and therefore each count should contain all the legal and essential requisites of an indictment. If any of these essential requisites be omitted, the indictment is vitiated, and the judgment must be arrested. Every indictment and therefore every count ought to have formal conclusion; here the first count has not such conclusion. It does not say against the allegiance—against the peace—or contrary to the statute. Therefore the count is to be thrown out of consideration. But the jury having, notwithstanding the direction of the court, returned a general verdict, it became necessary to examine the second count, and that is objectionable for uncertainty in the specification of the offer. The indictment is founded upon the statute and ought to pursue the words of it—The statute says, “if a man be adherent to the King’s enemies, and give them aid and comfort either within the realm, or elsewhere.” The disjunctive particle in this sentence creates a second offence, perfectly distinct from the first. One offence is adhering to the King’s enemies within the realm; the other is adhering to them without the realm. This is somewhat a new case. I have taken pains to search for precedents of indictments for adhering to the King’s enemies and have found but one in the reign of Elizabeth, but it is so vague and such a riddle as not to hold a moment. But referring to the words of the statute, I wish to know, for which offence this man is indicted in the second count. The indictment should state that he adhered to the King’s enemies within the realm, or that he adhered to them without, according to the words of the statute constituting the crime. There is a strong reason for this. Suppose he were acquitted, he might be indicted for adhering to the King’s enemies without the realm, and he could not plead *autre fois acquit*, because he would be told the indictment were not the same. Therefore this indictments being essentially defective in omitting the words of the statute, the man is not convicted according to law. I take this to be a rule, that where two things are included within a sentence, separate in their nature, a man cannot be indicted indiscriminately for both, but the indictment should distinguish between them. There might have been a third count for adhering to the King’s

enemies within the realm or without, and then a general verdict would prevent any objection.

MR. ATTORNEY-GENERAL.—My lords, it will be very unnecessary for me to give you much trouble. It is said, you should arrest the judgment for error in both the counts. It is said each count should be considered in itself as a complete indictment. For the substance of the charge, the rule is so. But where there are many counts, each specifying an offence, the indictment may have one general conclusion, going to the whole. As here, to simplify the case, the prisoner is charged with compassing the death of the King, and the next count specifies a new charge, that of adhering to the King's enemies. Both being thus specified, and there being prefatory matter, stating what the prisoner was, and his designs, then comes the general conclusion of the indictment, applying to both counts. If any man of common understanding, clear of technical modes of reasoning, read this indictment, he will find so, and it is according to the order used since the introduction of the English law, the conclusion always going to every count contained in the indictment. After having stated what the designs were, it says, he is guilty of compassing the King's death and of adhering to the King's enemies, and then there is a general conclusion, not confined to one or other count, but going to both offences included within the same statute. I believe all that which was so much to the disgrace of the law, in taking technical objections, has been exploded, in a variety of instances, and provided substantial justice has been done, courts of justice do not attend to objections of this sort unless they are absolutely bound so to do. If in the common course of language this conclusion can be applied to both charges, your lordships will do so, according to the modes now adopted upon cases of this sort, and it will be sufficient to refer your lordships to your own understanding, without further argument.

As to the second objection, it is somewhat savouring of substance, that the indictment should state whether he adhered to the King's enemies, either within the realm or without. An objection of that sort being made, I expected, that some precedent would be shown, or some authority that would warrant the objection. This indictment is conformable to the precedents I have seen, and when your lordships look into the statute, you will find there can be no ground for the objection—"Within the realm, or elsewhere"—is not part of the description of the crime, as set forth upon the face of the statute. The crime is "adhering to the King's enemies"—that is what the statute has declared—"if any man levy war, or be adherent to the King's enemies in the realm and gives them comfort elsewhere"—if he adhere to them, by giving them comfort in the realm or elsewhere—in a word, as if the statute said—"If he give them aid, let them be where they may"—let the act done be within the realm or without, he is alike guilty of adhering to the King's enemies. Your lordships see by the context, they are superfluous words, because it clearly shews, that if aid be given anywhere, the party giving it will be guilty.

[Here Mr. Attorney-General was stopped.]

MR. JUSTICE CHAMBERLAIN.—We will not trouble you any further,

and it would not be fair to the man, if we by our conduct insinuated, that the objections were likely to prevail. We are of opinion, that the objections are not founded; that the conclusion in sense and according to precedents goes to both counts. So it is in all declarations. Therefore there is nothing in the first objection. We are also of opinion, that the essence of the offence is adhering to the King's enemies, and it is immaterial where they are. It is an offence not constituted by statute, but an offence at common law, and the statute only says, that no man shall be indicted but for treason, as there specified. It is not created by the act—And indeed, if it were necessary, it does substantially appear, because two overt acts state, that an open and public war is carried on by the French, and that the prisoner was adhering to the persons exercising the government of France. So that if it were necessary, it is substantially charged that he was adhering to the enemies, without the realm.

Mr. Justice FINUCANE.—I agree, that the conclusion goes to both counts, and with regard to the last count, I think the statute is completely complied with in this indictment. “Be adherent to the King's enemies within the realm or elsewhere”—At the time this statute was passed, no treason could be tried, but treason within the realm, and that is the treason specified, “giving them aid within the realm”—then are added the words, “or without”—How is the charge here?—that the prisoner at Suffolk-street in the city of Dublin, &c. The locality is annexed to the person adhering, not to the enemy to whom he adhered. Therefore this is a sufficient charge within the words of the statute.

Mr. Baron GEORGE.—I concur perfectly with the rest of the court.

Mr. Baron GEORGE then, after a suitable and pathetic exordium, pronounced the sentence of the law, that the prisoner be executed on the 2d of March, 1796.

THE PROCEEDINGS
ON THE
T R I A L
OF
T H O M A S K E N N E D Y.

COMMISSION.

MONDAY, February 22, 1796.

Lord CLONMEL sat as the Judge of the Commission, and was assisted by Mr. Justice CHAMBERLAIN and Mr. Baron GEORGE.

Brady, Kennedy and Hart having postponed their trials at last Commission, upon the indictment then depending (*vid. ante*, p. 348,) new bills were sent up to the grand jury, which being returned true bills; copies thereof were served upon the prisoners previous to this Commission, and at their own desire, Messrs. M'NALLY and LYSAGHT were assigned their counsel.

This day Thomas Kennedy was put to the bar, and arraigned upon the following indictment.

The indictment varied but little from that in Weldon's case, and it is therefore thought unnecessary to set it out at length. The counts were for the same treasons as in Weldon's case, and the overt acts were participations in the designs of the Defenders; the publication or possession of the treasonable papers; assisting Weldon in the administering of the oath to Lawler; causing Lawler to repeat the catechism; and swearing him as a Defender. The overt acts in support of both counts were the same.

The prisoner pleaded, Not Guilty.

The following gentlemen were sworn upon

THE JURY.

Alexander Kirkpatrick,
Samuel Tyndal,
Cornelius Gautier,
John Evatt,
David Weir,
Wm. Watson, jun.

Joshua Paul Meredith,
George Adamson,
Samuel Middleton,
John Ormston,
Meade Nesbitt,
Godfrey Bourne.

William Lawler,* sworn—examined by Mr. SAURIN.

Said he went to London in the year 1791, where he worked at his business, which was that of a gilder; became a member of the London Corresponding Society; their object was a radical reform in Parliament; returned to Ireland about two years ago; had a letter of introduction from Daniel Isaac Eaton, a bookseller, in London, to Mr. Archibald Hamilton Rowan, of Dublin; did not know the contents of the letter, but it was to introduce him to Mr. Rowan; did not ask Eaton for the letter, but understood he corresponded with Rowan. Witness, upon his return to Ireland, became a member of a society; does not recollect the name; it was soon after dissolved; it was a republican society; gave the letter to a servant of Mr. Rowan's two or three days after he arrived; does not know the street; it was the left-hand of Britain-street; called in a few days and saw Mr. Rowan himself; he gave witness a print of Thomas Paine. Witness became acquainted with Burke, who was expelled the College, and Atkinson, the son of a watch-maker in Skinner-row, who told him Burke was collecting ten men, and desired witness to meet him at Gallan's, in Crane-lane; the Telegraphic Society afterwards met in Hoey's court; Burke told him the plan was that he himself named ten, each of whom was to find ten others, and each of those were to find five; this would make a sufficient force to take the Castle of Dublin; one hundred were to be clothed in scarlet uniforms, to make the citizens believe the soldiers had joined them; witness made up his ten in a fortnight, and procured a room in High-street, where they met; they were called the Philanthropic Society. About a fortnight after the Fermanagh Militia went to Lehanstown Camp witness became a Defender; was introduced to that society by Kennedy, the prisoner at the bar, and Brady; they called at his lodgings on Sunday evening, and brought him to the Horse Barrack, where he was to be sworn a Defender by Weldon, to whom witness was to pay a shilling, as he was a committee-man; had known Brady and Kennedy before; they were members of the Philanthropic Society; had a conversation with them three weeks before about Defenders; they said there was a thing getting among the army, so that they could do without the societies; they said they were sworn by Hanlon, of the Fermanagh Militia, and as Hanlon had gone to the camp, they would bring the witness to Weldon, whom they met at a public-house opposite the Barrack-gate; they were joined by Clayton; Weldon said, "had we not better make these two?" meaning Clayton and the witness; a prayer-book was produced, and Weldon pulled two papers out of his pocket, desired the witness and Clayton to lay their right hands on the book, and repeat after him, which was done; these are the papers. The next time witness saw these papers was about eight days after Weldon left town, in the possession of Kennedy, in Drury-lane; Murphy and Fay were with the witness; knew them to be Defenders by their using the signs; Kennedy came out of his master's house in Drury-lane with these papers; witness challenged

* The general tenor of the witness's testimony upon this trial, corresponding with what he had given in the two former cases, it is abridged considerably and given in the form of a narrative, rather than by question and answer.

them, loud enough for all to hear ; Kennedy allowed them to be the same papers ; when Weldon swore them upon the test, he told them the signs by which they might know a Defender. [Here the witness described the signs as before, *vide* p. 322.] Weldon said *Eliphismatis* was a latin word, but he did know the meaning of it. He also said, "if the King's head were off to-morrow they would be no longer under his government." Witness asked Weldon was he not afraid to carry those papers about him ; he said no, for he was never searched, and did not care who saw the large one, the small one was the principal, the other was only a test on account of swearing the soldiers. Brady asked if there was any one to head them ? Weldon said there was one in the North, but did not mention his name. Kennedy asked how they would be informed ? Weldon said there would be letters sent through the country to inform the Defenders when they were to rise. Brady asked how every one would know it ? Weldon said by the committee-men ; he would tell Brady when the next meeting would be held, that there would be one next week. Clayton and Kennedy then went away, the rest remained drinking punch ; they were all sober, but Kennedy was obliged to go home, being an apprentice. [The witness then gave an account of the meeting in Plunket-street, precisely as in the former case, *vide* p. 328.] The next meeting was at Stoneybatter, which was held for the purpose of going out to take arms. Hart swore a young man, and mentioned that their object was to assist the French. This was some time in the month of August. The next meeting was at Nowlan's, in Drury-lane, on Sunday the 23d of August ; a good many attended ; Coffey was in the chair ; he wanted to know how many Defenders were in Dublin, that they might have officers placed over them ; it was agreed to meet on the Sunday following, when the committee-men would report the numbers. Hart and the witness were called to order for talking together. Hart told him—[this evidence was objected to and not admitted]. The day after he ceased to be a Defender, and gave information to Mr. Cowan, in Grafton-street. Witness's reason was on account of what he had heard from Hart, as to the designs of the Defenders ; heard there was to be a meeting at Crumlin ; told Mr. Cowan of it and also Alderman James ; witness went there to delay them ; they went to that place to be out of the way ; the prisoner was not at Crumlin ; witness told the Alderman he would be there, and knew he himself was to be taken with the rest ; told Alderman James that the papers upon which witness was sworn by Weldon were in Kennedy's fob ; saw them at a meeting at Dry's, in Cork-street, on the 23d of August, when they were produced by Kennedy, who took them from his fob, and asked if Lewis was not a proper person to be sworn a Defender ?—was answered by Dry he was ; Coffey produced the prayer-book ; Kennedy laid the papers upon Coffey's bed, which was strapped up like a trunk ; there were three papers ; Kennedy said he had written one himself, for there was one of Weldon's which he did not like ; witness paid no attention to the third paper ; after Lewis was sworn, Kennedy put the papers into his fob again ; Lewis called on witness the same day after dinner ; they went to the Philanthropic Society, which usually met at Dry's, in Cork-street ; it was to meet that evening at five o'clock ; the meeting at Nowlan's was to be at six ; Lewis was sworn before they

went to Nowlan's; saw the papers with Kennedy at Dry's, but not at Nowlan's; when he read the papers, he read —g's Kings.

[The catechism and oath were then read.]

Cross-examined by Mr. M'NALLY.

Was brought up in the Protestant religion; his father and mother were Protestants; knows that every true Protestant believes in the Trinity; went with the Methodists before he went to England, but did not then deny the Protestant religion; sometimes went to church, sometimes to chapel; continued a Methodist after his return to Ireland; has read the first and second parts of Paine's Rights of Man, but never read his Age of Reason; always believed in God, and a future state, but Burke wanted to persuade him to believe there was no Saviour, and that he was a false prophet; Burke gave him a little book written by himself, and signed with his name, in support of his doctrine; it shook witness in his belief, but he was since convinced of his error, and was sorry for it; had done many things before which were wrong. Witness asked the chairmen at the corner of the street, what number Rowan lived at; the name of the street was on the back of the letter; Eaton told him, he mentioned him in the letter to Rowan; never was charged with bringing a false letter to Rowan; there was a false name in the letter to Rowan, for witness went by the name of Wright in London, and that must have been the name in the letter; when witness told Rowan his name, where he lived and of the Corresponding Society, Rowan did not ask him to come again; he gave witness some printed papers, does not recollect exactly what they were; never was charged with being a thief; it was said he took a frame from Mr. Robinson's, but another person afterwards told him he knew who stole it; Rowan asked him about the society in London and the militia, and about forming a society here; this passed in Newgate; one Strephon, who came to witness, mentioned a wish, that there should be a society formed here like the London Corresponding Society; witness advised an application to Rowan, who approved of it, but desired them to be cautious, as they saw what a scrape he had got into; the reason he changed his name was on account of his having enlisted, and deserted; does not exactly recollect what he swore when he was arrested; was not then a member of any Society; after he deserted, he became a member of the London Corresponding Society, went publicly there, and being but little known, thought there was no danger of his being apprehended, particularly as he had changed his name; belonged to the 16th division of the Corresponding Society; believes he was guilty of a breach of his oath, when he deserted; is sorry for it; he collected ten members for the Philanthropic society, they were sworn not to withdraw from the society, nor divulge their secrets; did not upon any former occasion swear in evidence, that the oath was, not to give evidence against each other; hopes he will be pardoned for all his offences, but cannot hope for reward, as nothing had been promised him; made no objection to Weldon's oath, nor was he shocked at the supposition of the King's head being cut off; he did not then think it a criminal act; one of their members had been arrested and lodged in a watch-house; they went to take him out, there was a shot fired;

is not bound to tell who fired the shot; after a meeting in Stoney-batter with Fay and Kennedy, the prisoner and some others, they had a talk of a design to attack the Chancellor in the course of the winter, as he returned from the house of lords, and to hang him from one of the trees in Stephen's-green; did not mention this in his information to Alderman James, but intended to have mentioned it to him; it might not have come out now had not counsel desired him to tell all the treasons he knew of; does not know who threw the stone at the Chancellor, nor did he see it thrown; told Alderman James the reason he became a Defender was to know what they were about; agreed with them in everything but what he heard Hart say; has been kept in close custody in the Castle for three months for the purpose of giving evidence against the prisoner's; Burke was the principal person, who led him astray in religious matters; Mr. Cowan advised him to give information; was standing in Dame-street the day lord Camden arrived here; was also in the Castle-yard that day; never threw a stone at the Chancellor, nor heard of a stone being to be thrown, till after it was thrown; does not recollect any reason he had for going home early the evening the stone was thrown; was called on and went out with the party to confine Cockayne; were prevented by his not being at Mrs. Jackson's; Le Blanc said if Cockayne was put to death, what he had sworn would stand good;—witness had a pistol when he was in the watch-house; there was a pistol fired, it had a ball in it; was present at the attack upon a house the corner of Bull-alley, in going home; had pistols about him, but does not know whether he had charged them or not; it was a crimping-house; believes the oath was written by Hanlon, the Fermanagh militia-man.

Alderman James, sworn.—Examined by Mr. SOLICITOR-GENERAL.

Lawler came to him with Mr. Cowan, about the 26th of August, and lodged informations. His evidence upon the former trials and the present, corresponded with the account he then gave, except as to the design upon the Chancellor. The alderman issued warrants against several persons in consequence of the informations, and he desired Mr. Carleton, the chief constable, to be particular in examining Kennedy's fob, for Lawler said the oath would be found there; took Lawler's examinations the first time he saw him; no examinations had been lodged against Lawler at that time, nor did the alderman ever issue a warrant for his apprehension, but issued warrants against many other persons upon his informations.

Cross-examined by Mr. LYSAGHT.

Lawler did not disclose the circumstance respecting the Chancellor. The alderman thought it his duty to find out everything; cannot say that Lawler intentionally withheld it; he did not disclose the circumstance of his enlisting or deserting, or that he had fired a shot into the watch house. He was examined after dinner, about eight o'clock; no warrant was issued to apprehend him, but he was taken at the house of one Toole in Crumlin, in consequence of his information that he would be there.

Oliver Carleton, Esq.—Examined by Mr. RUXTON.

Was high constable of police in August last; received warrants from Alderman James against Kennedy, the prisoner, and Brady, in consequence of which he went to Stephen-street, between four and five in the morning of the 27th of August; rapped very loud at the door, two persons came to a gate and opened it; he asked their names, they answered, Kennedy and Brady; he took them into custody, and agreeable to the directions he had received, was particular in searching Kennedy's fob, in which he found the oath and catechism; [they were here shewn to the witness, and he identified them from the initials of his name.]

Cross-examined by Mr. M'NALLY.

He asked Kennedy how the papers came there, and what was the use of them?—He made no answer.

Case rested for the crown.

Mr. M'NALLY.—My lords, and gentlemen of the jury, I am of counsel in this case with my learned friend, Mr. Lysaght; and it therefore becomes my duty to call your attention to the defence of the unfortunate young boy, who stands a prisoner at the bar of the court, arraigned for high treason. Gentlemen, I apply to him the epithet of unfortunate, not because the evidence that has been given against him, can, in my humble opinion, impress your minds with a conception of his being guilty, but, because any subject of the crown, standing in his situation, standing in that dock, and before this tribunal, accused of the most heinous offence the law recognizes, and punishable by the most cruel sentence the law knows, must be considered as unfortunate, however conscious of his own innocence. Gentlemen, I address you on the part of this unfortunate youth, under the influence of that reverential awe that always influences my mind when calling for the attention of a jury of your description. A jury which I am convinced, from my personal knowledge of some of you, and from the general character of you all, is composed of wise and intelligent men; men who are well acquainted with the principles of those laws under which we live, and by which the lowest of us are protected, and fully adequate to the honest discharge of that high and respectable, I was going to say paramount office, which they fill. In addressing you, gentlemen, I must of course, feel for my own deficiency; but I find consolation from this reflection; that you, actuated by the principles of mercy, while guided by the rules of law and justice, will contribute every aid to such observations as I shall submit to your deliberation. Gentlemen, every man who admires and loves the constitution of his country, (and every man who is not either a knave, a fool, a lunatic, or an infant, must admire its system,) I say every man who loves and admires the system of our constitution, must look up to juries as the legal guardians, protectors, and conservators of the lives, the liberties and the properties of the people. I consider a jury as a political citadel, placed in the centre of the constitution—a citadel, where liberty has often planted her standard, and where she must always make an effectual stand against oppression and tyranny, unless betrayed by those whose sacred duty it is to protect her. Gentlemen, it is necessary that I should make a few

observations to you on what has fallen from Mr. Attorney-General, in stating the case for the crown; and my leading observation is, that the learned gentleman, in the discharge of his official duty, has this day, in the most honourable and candid manner, stated the case against the prisoner, without an attempt to aggravate or colour the charge; and I doubt not but those other learned counsel for the prosecution, whose duty calls upon them to follow Mr. Attorney-General, will adopt the same manly and humane conduct.

I beg leave, gentlemen of the jury, to remind you of the excellent caution urged with warmth and with clemency, by the Attorney-General. He cautioned you against acting under prejudices resulting from extrinsic causes. His advice was just, legal and wise. A juror should divest his mind of all extrinsic matters; he should come into that box pure, unsullied and unbiassed as an infant entering into life; the evidence given in court should be the only object of his deliberation. On the evidence sworn to in court, and that evidence only, he is bound in conscience, by his oath, to form his verdict: For what is his oath? He is sworn on the Testament of his faith, that he will well and truly try, and a true deliverance make between his Sovereign the King and the prisoner, according to evidence. For this reason, gentlemen, if French politics or French depredations, be stated, you will consider them as extraneous to the matter in issue; and, for this reason, should the counsel for the crown attempt to engage your passions by adverting to the distracted state of this or that country, you will expunge such statement from your recollection. For, gentlemen, you are not sworn to give a verdict upon the state of France, or upon the state of Ireland, but truly to try upon the evidence, given to you upon oath, whether the prisoner be guilty or not guilty of the crimes of high treason, charged upon him by the indictment. Gentlemen, the Attorney-General has adverted to the public newspapers, and has stated to you that through their medium pains had been taken to influence the public mind, in respect to the trials for treason, now prosecuting by government. Gentlemen, I do think with Mr. Attorney-General, that animadversions on legal proceedings while they are pending, is an offence; but if Mr. Attorney-General has read all the public papers, he must know that such animadversions have not been confined to papers of any particular political description; for in those papers denominated Court Prints, the writers of them have not only traduced those who have appeared as witnesses for the prisoner, but those employed as their counsel. In one of those morning prints, I have been noticed with censure, and the character with whom I had the honour to act on a trial at the last commission, a character as great and eminent for genius, as ever appeared at this or any bar, has been calumnated for exerting his paramount abilities in defence of his client.* But, gentlemen, I am satisfied that whatever

* Alluding to John Philpot Curran, who suffered still more from similar causes at a later period, when engaged in the defence of the United Irishmen in 1798. "Mr. Curran, upon those memorable trials, exposed his character at the time to the foulest misrepresentations. The furious and the timid considered it as an act of loyalty to brand as little better than a traitor the advocate who, in defending the accused, ventured to demand those legal privileges and that fair, impartial hearing, to which, by the constitution of their country, they were entitled. He

you have heard, or whatever you have read relative to the subject now before you—you will obliterate from your memories, confining your deliberations solely to the evidence given in open court. Gentlemen, Mr. Attorney-General has spoken of the necessity of making an example—in my humble opinion this was not a subject to be addressed to you; for, gentlemen, it is not your province to make examples, that last and distressing duty, founded in necessity, belongs to another tribunal. Your duty is to hear the evidence, and on the credit you give the evidence to acquit or convict—and I trust, from the nature of the evidence, acquittal will this day mark your verdict—and that the prisoner will not be found a subject for example.

There are, gentlemen, but two leading features in this case to which I shall call your attention:

First, Mr. Lawler, the principal witness produced on the table, and secondly, the evidence given by that witness. As to the witness, though he does not come under the legal description of an approver, as on a former occasion was stated by the bench, yet it clearly appears, from his own confessions, that he has been a *particeps criminis*, in a catalogue of offences as vile and black as ever stained a human heart, or disgraced the character of man; therefore he comes before you, gentlemen of the jury, in at least a questionable shape, and within that rule of law and legal evidence, that has been laid down by one of the wisest, and what was more to his honour, one of the humanest judges that ever presided in an English court of justice. I allude, gentlemen, to that celebrated jurist, whose noble and independent conduct deservedly procured him the title of the "great Lord Hale."

What are the words of that great man upon approvers? I will tell you, gentlemen, his opinion upon such witnesses. Lord Hale says, "though an approver be admissable as a witness in law, yet, the credibility of his testimony is to be left to the jury, and truly it would be hard to take away the life of a person upon the evidence of such a witness, that swears to save his own; and yet confesseth himself guilty of so great a crime—unless there be very considerable circumstances, which may give greater credit to what he swears." This opinion will be found in Hale's Pleas of the Crown, p. 305. Gentlemen, it will be for you to consider whether the witness, Lawler, comes within the description given by the great and good Lord Hale—and it will also be for you to consider that Lord Hale is here speaking of a witness implicated only in the offence he is called to prove, coming forward charged only with one crime. But, gentlemen, what would the learned and benevolent Lord Hale have said, if he had been speaking of such a witness as Lawler? If he had been speaking of a *particeps criminis*, who had declared he had taken the oath of allegiance, as a soldier and a subject, and had violated that oath? If he had been speaking of an impious man, against whom it had been proved, that he had denied the existence of the persons of the Trinity?

often received as he entered the court, anonymous letters threatening his life, if he should utter a syllable that might bring discredit upon the public measures of the day."—Curran's Life by his Son, 2 vol. p. 82. In his defence of Bond, he was repeatedly interrupted by the clamorous and savage gestures of the military who thronged the court. They mistook the man. He fixed his eyes upon them, and exclaimed, "You may assassinate me, but you shall not intimidate me."

If he had been speaking of a man who had administered oaths to seduce and delude youths, had sworn them never to prosecute Defenders, and had then come forward and prosecuted them himself? If he had been speaking of a man who had united with conspirators to assassinate a witness? If he had been speaking of a man who had confessed, there was a time when he did not think it a crime to take off the head of his sacred Majesty, and destroy the government? I add, destroy the government, because the existence of the constitution and government of this country depends upon the existence of the King. A man, who, when the question was put could not deny, and therefore refused to answer that he once fired a charged pistol into a watch-house, with intent to commit murder; and that there was a time, and that recent, when he did not consider it a crime to lie in wait for the purpose of seizing and hanging no less a person than the Lord High Chancellor of Ireland. It is true, gentlemen, Mr. Lawler is by his own account a repentant sinner, for he has told you, he hopes to obtain forgiveness from government and from God. He has now told you how long repentance has dawned upon him—but if he has repented, how does the sincerity of his contrition appear? Does it appear as it ought? Does it appear he has made a full confession of all his offences? No, for it appears that he suppressed the whole of the intended assassination of the Lord Chancellor, and the intended assassination of Cockane, when he gave in his information on oath to Alderman James. Alderman James, I presume, admonished him, and swore him to tell the truth, and he suppressed the truth. I admit, gentlemen, that necessity on particular occasions, justifies the admission of such witnesses as Mr. Lawler, otherwise, if that was not the case, the most atrocious offences would often escape with impunity; but permit me, gentlemen, to advert to the great Lord Hale, and on his authority to observe, that even in such cases there must be strong corroborating circumstances to give credence to the man who, even voluntarily, comes forward to save his own life, by the sacrificing the life of another.

Gentlemen, the papers found on the prisoner and produced in evidence to support this prosecution, will, probably, be held up to you, and expatiated on by the counsel for the crown, as strong corroborating circumstances. But you must have remarked, that no evidence was given by Lawler to shew that these papers are the identical papers that were in the possession of Weldon; of course it does not appear to you that those papers were ever appropriated to any use, or ever published in any manner by the prisoner; and, gentlemen, the court will concur with me in this rule of law, that the possession of papers without a publication, however seditious their contents may be, however treasonable their tendency, does not amount to high treason, for the mere possession of treasonable papers does not amount to an overt act. God forbid it should! for, if that was the case, no man would be safe;—the false friend, the bribed servant, the suborned guest, every spy that came into a man's house, would have it in his power, by privately depositing a private paper, to bring his innocent intimate, master, or host to condign punishment. Gentlemen, a very melancholy case once occurred in England which very fully illustrates this position. It is a case well known to the learned judges of the bench; and, indeed, I believe of general notoriety. I

mean the case of Salmon, Geoghegan, and other miscreants, who, in consequence of large rewards, offered by act of parliament, for the apprehension and conviction of foot-pad robbers, entered into a conspiracy to obtain rewards, by falsely accusing innocent young men. Gentlemen, they accomplished their diabolical scheme, by insinuating themselves into the confidence of unsuspecting and unwary youths, and then putting marked coin, or other articles into their pockets, by which they fabricated evidence to satisfy a jury, convicted the dupes of their villainy, and pocketed the parliamentary remuneration of their wickedness. They were at last discovered, and justice cut asunder this gordian knot of treachery. They were indicted for murder, but the law could not reach their lives—they were indicted and convicted of conspiracy; they were set in the pillory, and the enraged populace pelted out the brains of two of them. Does Lawler appear a man incapable of such a villainous scheme? Is it improbable that he, with a hope of pardon and reward before him, possessing the confidence of the prisoner and having given information to the magistrate, contrived by some subtle stratagem to convey these papers to the possession of the prisoner, for the very purpose of using them afterwards in corroboration of his own testimony? Gentlemen, there is one circumstance that strengthens this position, it is this: you must recollect that Lawler swore his reason for getting among the Defenders was for the purpose of coming at what they were about; but will you believe that to be the fact? If mere curiosity was his motive, why did he not secede from the societies when he did become acquainted with the purposes of their association? He must have had a motive, and that motive must have been to betray—he must have been sent in, or he went into the societies for that purpose. Gentlemen, you cannot for a moment suppose, that the wretch who has confessed he would at one time have thought it no offence to take off the head of his anointed Sovereign, could at any time feel compunction at murdering his Majesty's subjects. Gentlemen, when you come to examine the evidence of this man, enquire among yourselves whether he has in any material point contradicted himself. For it is an established rule, that if a witness contradicts himself in any material part of his evidence, it discredits the whole; and so far has this wise and salutary doctrine of evidence been carried that Lord Mansfield extending the rule to civil causes, has on trials where one witness has given false testimony, though there were other witnesses of unimpeached characters examined to the same points with the prejudiced party, directed the jury to reject the whole of the evidence and find a verdict against the party producing such a witness. Mr. Lawler's character is fully before you and in your possession; and permit me to ask you, has your knowledge of it raised a doubt in your mind? For if it has raised a doubt, you are bound by the imperative dictate of conscience, to acquit the prisoner. You are bound, I say, not to convict, unless his testimony be irresistible; and when you take into your consideration, that only one witness has been produced to the merits, I rest satisfied, that you will send this unhappy youth at the bar, home to his parents, where his errors may be corrected and his mind improved, and not by a verdict of guilty deprive him of his life, under the infliction of a judgment the most severe that the laws

of this country, or perhaps of any other country, has adopted. I here conclude. We will now call witnesses to shew you and the court, that Lawler is a person of such infamous morals and holding such impious principles in point of religion, that he ought not to be credited on oath giving testimony in a court of justice—and then I rest satisfied, you will reject his evidence as being unworthy of credence, and give life and liberty to my client, by a verdict of—not guilty.

Samuel Gallan, sworn.—Examined by Mr. LYSAGHT.

Lives at No. 2, Crane-lane, is a grocer, has known Lawler for four or five years, and does not think him a man to be believed upon his oath.

Cross-examined by Mr. SOLICITOR-GENERAL.

Witness was once a hair-dresser, and has a brother who has travelled to New York, last September, since these people have been taken up; there were fourteen or fifteen of them in a reading society, for the information of themselves; no books were bought while witness was in the society; they all gave what books they had for the use of the society. His brother went to New York, to follow his trade, as an engraver, and has been talking of going there these three years. Witness never was in the Philanthropic Society, but believes his brother was; witness expressed a concern for Lawler, when he heard he was taken up; did not hear of his being taken for a week after he was taken; witness pitied him, as being accused of Defenderism; expressed his sorrow and surprise at it, as he thought him incapable of such a crime; they used to read the papers of the day at the society—Goldsmith's Animated Nature, Pope's Works, Chamber's Dictionary, &c.—thought Lawler an innocent lad; but from witness's knowledge of his religious principles, would not believe him on his oath; witness and Lawler were both Protestants; does not know where the persons are who composed the club; believes Burke ran away; would not believe him either on account of his principles; never knew any of the Philanthropic Society, but his brother, as he himself was not a member; never heard of Strephon's religion; never expressed his opinion, or wish for a reform. [The witness declined to answer, whether he had ever expressed any opinion upon government.] Witness is about twenty-four years of age, and never went to any other reading society for instructions since he went to school.

Nicholas Clare, sworn.—Examined by Mr. M'NALLY.

Is a master tailor, lives at 39, Townsend-street; knows Lawler sixteen months; would not believe him on his oath; witness belonged to a reading society with him, and one evening Paine's Age of Reason was spoke of; Lawler said he would go farther than Paine, for he denied any part of the Trinity.

Cross-examined by Mr. SAUBIN.

Does not know who had him admitted, nor any of the persons there, but Lawler and Gallan; has heard that the taking up of the prisoners was the cause of Gallan's going off; witness's reason for not knowing

more of the society, was, that he seldom went there; did not go above four times; never saw any of the persons accused of high treason, until he saw them in court; believes he brought his brother into the society; was acquainted with one Cox; witness believes he brought him into the society; never knew that Lawler was called to account for any offence in a court of justice; witness quit the society on account of Lawler's conduct, and advised his brother to quit it.

John Clare, sworn.—Examined by Mr. LYSAGHT.

Was a member of the society, knew Lawler and was acquainted with his general character; would not believe him on account of his abandoned behaviour, and denying a future state; would not take away the life of a fly upon his testimony.

Cross-examined by Mr. KELLS.

Is a tailor, was a member of the society six months; the greatest number he ever saw there was twenty-four; Gallan, Atkinson, Cox, Burke, Lawler, witness's brother were among the number; it was intended for information; sometimes they had a law question; witness hoped to be a magistrate some time, and liked a law question; they had the news of the day also upon which they used to argue; Burke and Lawler were for the Age of Reason being introduced; witness is a married man, thirty-six years of age, never was at such a place till about three years ago; they were to have a French master to teach them French; Lawler's getting his hand cut in a riot, was the reason witness left the society; Lawler was an impious man; never heard why Atkinson went to America, except it was to better himself—nor why Gallan went—believes they went together last September—never heard that counsellor Barrington took Atkinson.

William Ebbs, sworn.—Examined by Mr. McNALLY.

Is a pewterer; has known Lawler some time; he and his wife lodged in witness's house; does not think he is a man to be believed upon his oath; he is a man of very irreligious principles; worked on Sundays, and did not go to any place of worship.

Cross-examined by Mr. RUXTON.

Lawler lodged some time in witness's house, paid his rent, and was an industrious, regular man; did express a concern at hearing he was taken up, for he was an industrious man; his wife was much alarmed, and hid something in the dirt-hole; witness searched and found two bags of musket-balls; he also found a sledge; thought these must have been intended for some wicked purpose, and wished to get rid of him; these, coupled with the other circumstances, induce witness not to believe Lawler; never offered to go security for him, but said he was an honest man.

John Robinson, sworn.—Examined by Mr. LYSAGHT.

Lawler served part of his apprenticeship to the witness—was a bad boy—that is twelve years since, and witness could not take upon him now to say whether he was to be believed upon his oath.

Cornelius Gantier, one of the jury, sworn.—Examined by
Mr. M'NALLY.

Was one of the jury upon Leary's trial ; does not recollect particularly what Lawler swore upon that trial.

Samuel Tyndall, another of the jury, sworn.—Examined by
Mr. LYSAGHT.

Was one of the jury upon Leary's trial, recollects that Lawler then swore, that Mr. Robinson had beaten him, for which he ran away—that was the only reason as he recollects—Lawler said he was accused of stealing something from Mr. Robinson.

Mr. LYSAGHT.—My lords and gentlemen of the jury, it is my duty to place the best shield I can between the unfortunate youth at the bar, and an ignominious and untimely death, and if my conception of the law applicable to this case, be just, I feel a strong hope of being able to convince both the court and the jury, that the prisoner is guiltless of the crime with which he stands charged ; I say emphatically, with which he stands charged ; for should you, gentlemen of the jury, squander much credulity on the testimony that has been adduced, still, if you do not give entire credence to the evidence of Lawler, the prisoner, however incorrect, or, if you will criminal, if his crime falls short of high treason, you are bound to acquit. The specific treasons charged against him are the compassing and imagining the death of the King, and adhering to the King's enemies. I shall not deny, that an adherence to the King's enemies is a substantive treason, and may be also laid as an overt act, which it unquestionably is, of conspiring and imagining the death of the King ; but I, with respect to the court, insist on it, that the barely having in one's possession without publication,* a paper containing favourable sentiments and wishes towards an enemy in a distant country, without any communication or correspondence whatsoever with the enemy ; I say such a circumstance cannot, on any principle of law, of authority, or of precedent, that I know ; I say such a circumstance cannot be swelled up to the enormity of high treason. I also contend for it, and I am supported by Hale and Foster, that a bare conspiracy to levy war for lawless purposes, short of deposing or dethroning the King, or in any degree endangering his sacred life, is not high treason, nor an overt act to manifest the compassing his death.†

Having said so much on the law of treason, so far as it could be supposed to bear on the present case, I shall have but little to add to the observations which have been so forcibly urged by Mr. M'Nally, on the evidence of Lawler, contaminated and damned as his credit must be, from his avowed perjuries, intended assassinations and felonies ; so totally divested, as he has been proved to be, of that sense of religion, without which no man can regard the sanction of an oath—it would, I am confident, be a waste of time to the court to argue that his testimony must be thrown out of your consideration. What then is to affect the prisoner's life—is it the unpublished

* Foster, 198, 3d Edition. † Foster, Discourse on Treason, chapter 2d.

nonsense found on him? Now, gentlemen of the jury, as to the declaration, the words of it are, "I, *A. B.* of my own good will and consent, do swear that I will be true to his Majesty King George the Third, whilst I live under the same government." Surely, gentlemen of the jury, "while I live under his government," may have been understood by the youth at the bar, to have meant the duration of his own life—there is no inuendo laid in the indictment to eke out a criminal construction of this declaration; there is nothing necessarily to be inferred from it in law, in logic, or in reason, to charge the prisoner with treason, or even with sedition. Gentlemen of the jury, as to the catechism, I own I cannot say so much, but as it was never published by the prisoner, he might, as Judge Blackstone says, "keep poison in his closet," so that he did not vend or disperse it. This catechism may be considered as seditious; yet courts and juries should be cautious, how criminal interpretations should be given to words in themselves dubious. In *Fleta* it is laid down, that formerly in appeals for treason, the appellant was obliged to prove with the most critical accuracy and perspicuity, the words and writing imputed, their clear meaning and import, beyond doubt or question, and if he failed in doing so, the appellee was discharged and cleared of the imputed treason. But, gentlemen of the jury, I hold in my hand high authority to shew—authority not expressly stating, but by fair and almost necessary implication admitting, that even the administering unlawful oaths and engagements, is not considered to amount to high treason. Defenders now are what White-boys formerly were, and the act of the 27 of the King, was needless and nugatory, if the crimes provided against by it amounted to treason; [here Mr. Lysaght read extracts from the acts alluded to, to support his argument,] and contended, that by this statute he was empowered to assert that the King, Lords and Commons of Ireland allowed impliedly, that the statute of treasons could not legally operate against Defenderism. But the prosecutions of the present day, though for the same offences, were to vary from the prosecutions heretofore carried on against White-boys and Right-boys, as they were then called, and Defenders as they are now called. Why? Because a general alarm was spread through these kingdoms, and many good and wise men were infected with it. How else account for the late prosecutions in England, the result of which was the acquittal of all accused, and the ascertaining that one of the supposed traitors, Horne Tooke, was a gentleman of the soundest and most pure principles of unshaken patriotism and loyalty! as was manifested by the evidence. My lords, I ask what precedent can be adduced to support the position, that the having a paper of any-kind in one's possession without publication, can be high treason?

Hensey had sent forth his letter, it was intercepted, but it had gone from him with intent that it should reach the enemy. Is there in the case before you, and on which give me leave to say posterity will comment, is there the shadow of evidence even from the infamous and solitary witness Lawler, that any communication or correspondence with the enemy was had or intended? Must not the intention be guilty? Was Rabelais put to death for having—it is too solemn an occasion to throw out such allusions, if they be not

relevant—was Rabelais put to death, even under a despotic government, for writing labels on phials full of brick dust, “poison for the King, poison for the Queen,” &c. No, because no treasonable intention could be proved against him. And will the court and the jury in this case say, without credible proof, that Eliphismatis, and such trash of enigmatical or rather nonsensical import—and certainly not credibly proved to be of treasonable import—is an overt act of adhering to the King’s enemies? *Where* are his enemies? where I hope they ever shall be, *distant*. How did the prisoner *adhere*? Did he *correspond* with, did he *send intelligence* to? Does the very indictment charge that he adhered in any manner, except to use its language, “in case the French should land.” I have heard of constructive treasons—here are eventual, contingent treasons—blundering accusation! Gentlemen of the jury, will you disgrace your country and yourselves? I hope not—I have for myself to lament, that I have been assigned as counsel for the prisoner but this day, in the place of that able advocate, Mr. Curran, who could not attend; but I confide in the wisdom and integrity of the court and jury. Mr. Lysaght concluded by conjuring the court not to put too heavy a weapon into the hands of justice, by multiplying treasons; and to the jury, to reflect on the infamy of Lawler, and the youth of the prisoner. Do not, gentlemen of the jury, suffer your consciences to be biassed by interest or by prejudice, or your judgment to be shaken by alarm. Do not superstitiously imagine, that the poor youth at the bar is so unhallowed and full of guilt, that the safety of the state vessel requires that he should be thrown over and perish.

MR. PRIME-SERGEANT.—My lords, and gentlemen of the jury, it is with no small pain that I rise upon this occasion, to perform the disagreeable task which my duty requires. No man can feel more sincere compassion than I do for the unfortunate youth at the bar, and no man would feel more happy at his being able to establish his innocence to the satisfaction of the jury. But, gentlemen, justice imposes an indispensable duty upon me, and while I am ready, with the greatest candour, to allow the unhappy prisoner every advantage which the ingenuity of his counsel could suggest upon the facts adduced in evidence; yet, gentlemen, I must, in advertent to that evidence, be obliged to shew it in a very different light indeed, from that in which it has been exhibited by the prisoner’s counsel. Gentlemen, I shall be obliged to demonstrate to you, that the facts proved do fully support the charge of high treason, agreeably to the construction of the statutes of treasons, as laid down by the learned gentleman who stated the case on the part of the crown. Much has been said, gentlemen, with respect to the testimony of Lawler; it has been violently arraigned by the prisoner’s counsel. But, gentlemen, I must deny it is that species of evidence which it has been called; namely, the evidence of an approver, swearing to save his own life—for here, gentlemen, no promise of reward ever appeared, or existed. Lawler had not been apprehended, he was not in custody, he was not ever charged with any crime; and he appears to have acted solely from motives of compunction. Gentlemen, suppose a man had been at one period of his life of abandoned or dissolute principles, was no room ever to be left for repentance, or amendment? If the witness

had no scruples of conscience, by listening to which, he hoped to make some atonement to his country, for the mischief he was promoting, by stopping its current before it overwhelmed the country; if, gentlemen, the witness was afraid merely of personal mischief, he might have withdrawn from the scene; he was at perfect liberty to do so. No person accused him, he was not even suspected, save by his accomplices; he could have fled to America or elsewhere, but his testimony has been perfectly consistent throughout the trial, as it has been during the former ones. What was his account? He told you he was appalled with horror at hearing the real intention of the Defenders, which he was unacquainted with before; he therefore determined to abandon them, and if possible, to prevent the completion of their diabolical purposes. He disclosed the matter to Mr. Cowan, who advised him to lodge informations, which he accordingly did; and it appears he did so voluntarily, without any apprehension of prosecution, or promise of reward. Gentlemen, the circumstance of being a Defender, is of itself a strong impeachment upon the moral character of a man. But will it be pretended that it altogether precludes his testimony, where he could have had no necessity for coming forward, no fear of punishment, no promise of reward, no apparent object, but what he told you himself, the prevention of public calamity and general mischief. If such testimony were rejected by the law, the secrets of conspirators never could be developed, particularly, where they had screened their intentions and designs from the prying eye of justice, by the most solemn engagements of privacy. Gentlemen, how are such offenders to be brought to punishment? You cannot expect that men of respectable character could be acquainted with such schemes, or able to give evidence of them. The law only requires that the best evidence which the case admits of shall be given. Lawler was certainly a *particeps criminis* with the rest of the party, but when he came acquainted with the monstrous extent of their designs and the diabolical plans in agitation, he became appalled with horror, and only obeyed the dictate of his conscience in discovering the plot. Thus, gentlemen, he has been made the providential instrument of frustrating this diabolical project, which if left undiscovered for a few weeks longer, would have prevented the possibility of a jury sitting in that box this day, to discharge the most inestimable privilege of our happy constitution. But, gentlemen, it has been said that the testimony of Lawler is unsupported—it is no such thing: it has been consistent and circumstantial, as well now as upon the former trials. Gentlemen, his testimony is uncontradicted—not a single witness adduced to contradict any one fact stated to have passed at any of the various meetings, at different places and at different times. He has uniformly told the same story, except as to the design upon the Chancellor, which was brought out upon the cross-examination, and in every point where the magistrates and the officers of justice have been concerned, his testimony is fully corroborated down to the finding of the same identical oath and catechism in the fob of the prisoner. The ingenuity of the prisoner's counsel in the course of a very long cross-examination, has not been able to warp the witness into the slightest prevarication, and no attempt has been made to prove the contrary of what he has related.

He has given the prisoner ample opportunity of doing that, if it were in his power, by mentioning the places where they met—it has not been attempted. But, gentlemen, it is said that Lawler's testimony was rejected and disbelieved by a former jury. That, gentlemen, I cannot admit to be the fact; for it might be perfectly consistent for the very same jury to acquit Leary upon the evidence given against him by Lawler, and to find the prisoner now at the bar guilty upon the evidence of the same witness. The jury in the former case, might have had some doubt, as to the criminality of the man—it did not appear positively, that he was present when any oath was administered, and if the jury had any scruples in their minds, so as not to be perfectly satisfied of his guilt, it was their duty to acquit. But, gentlemen, what room is there for doubt in the present case? The actual administration of the oath has been proved, and that very same oath has been found in the prisoner's possession.

Mr. PRIME-SERJEANT then commented very fully upon the facts given in evidence, the treasonable nature of the oath, and the zealous activity of the prisoner, from which he inferred that no doubt could remain of his guilt. But, however, if, notwithstanding, they had any reasonable doubt, such as rational men could entertain, it would be their duty to acquit the prisoner.

Lord CLONMEL—Gentlemen of the jury, if I felt the smallest difficulty upon the whole of the merits of this case, in proceeding to deliver my opinion upon it forthwith, I would adjourn the court for a short time, or until the next day, in order to take time to consider of it; but, gentlemen, I do not feel any such difficulty; such adjournments indeed have taken place in another country, but it is a precedent which, I must confess, I do not much approve; and in presiding upon criminal trials, I will never, so long as I am able to sit, and my brother judges are able to assist me, adjourn the court until the issue be finally disposed of. Gentlemen, the indictment which you are now to try is founded upon the statute of Edward III.; a statute which has been enjoyed by the happy Constitution of these realms for seven hundred years, and which, for one hundred years past, it has not been necessary to call into execution in this kingdom. Gentlemen, it may be necessary to state to you what the accusation is not, in order to disembarass your minds from the representation of counsel. This, gentlemen, is not a charge of felony, under the White-boy Act,—it is not a charge for levying war to pull down enclosures—it is not a charge against the prisoner for having in his possession unpublished papers—it was not a charge for a tumultuous rising, or of merely assembling with Defenders to commit robbery or burglary—it is not a charge of merely taking, or administering illegal oaths; but, gentlemen, it is an indictment of high treason, founded in the statute of Edward III., and it charges the prisoner with associating himself with divers false traitors, styling themselves Defenders, and combining and conspiring with them to aid and assist the persons exercising the powers of government in France, at open war with the King, for the purpose of overturning, by force, the King's government in this country, in Church and State, thereby adhering to the King's enemies, and compassing and imagining the King's death. For, gentlemen, it has been truly stated by the learned officer of the crown who opened

the case for the prosecution, that any adherence to the King's enemies at open war with his Majesty, for the purpose of aiding or assisting them against his Majesty, necessarily, in its obvious consequences, involves the safety of the King's life and the existence of his government. Consequently, gentlemen, he who is guilty of the one, is, by necessary implication, guilty of the other. Therefore, gentlemen, it is not necessary that there should be a direct attack upon the King's person, or an actual levy of troops to carry on rebellion, in order to support this indictment; for if a combination, or conspiracy for the purpose, existed amongst his Majesty's subjects, and if it can be established by overt acts committed by them, the charge will be thereby as fully substantiated as much as if the most malicious purpose of such a conspiracy had been perpetrated and completed. Gentlemen, the safety of the State and the Constitution itself is inseparably connected with the safety of the King, who is the first soldier and the first magistrate of the State, and therefore the law, wisely considering the importance of his invaluable life to the peace and existence of society, has guarded even the most distant approaches towards the safety of that life with the most scrupulous caution; for gentlemen, this is the only instance in which the policy of our laws takes the intention of guilt, manifested by plain, unequivocal overt acts, as adequate to the completion of the crime, and inflicts the punishment accordingly for such criminal intention. Gentlemen, having thus stated the law arising upon the case, as far as it occurs to me to be necessary, I shall next proceed to consider the charges stated in this indictment, and the evidence which has been adduced in support of them.

[Here his lordship stated the overt acts enumerated in the indictment, and then recapitulated, from his notes, the whole of the evidence.]

His lordship afterwards stated it as his opinion, that all the circumstances separately and collectively considered, showed that a connection with and adherence to the French Convention was the unquestionable purpose of Defenderism, for the end of assisting the French in any invasion of this country, and overturning the government of it; and the guilt of these designs, if the jury believed the testimony of Lawler, was clearly brought home to the prisoner at the bar. Gentlemen, the next object for your consideration will be the evidence of that witness. How does it appear? Certainly, not as that of an approver, as has been represented by the counsel; he stands upon very different grounds. An approver, gentlemen, is a man who, upon being apprehended and charged with a crime, was encouraged by the offer of a pardon to disclose his crime and prosecute his accomplices. Gentlemen, is that the case of Lawler? Certainly not. Was he apprehended upon a charge of any crime? No. Was he offered a pardon? No. Did he prosecute his accomplices out of a necessity to save his own life? No. Was there anything to prevent his escape from justice if he chose it without making any discovery? No. Had he any malice to the prisoner? Was there any dispute between them? Nothing of the kind was attempted to be proved. The testimony of the witness throughout was clear, collected, and consistent, without any prevarication. It was circumstantially supported by the testimony of Alderman James and Mr. Carleton, and so far from being contradicted by the evidence examined, on the part of the prisoner, it was

strengthened in several respects. So far as the evidence for the prisoner went, it exactly tallied and indented with the account given by Lawler, but what amounted to very strong presumptive proof, in support of Lawler, was, that notwithstanding the various meetings particularized by him at Plunket-street, at Drury-lane, at Stoneybatter, at Cork-street, not a single tittle of evidence appeared to show that the prisoner was not at any of those meetings; nor did any of those persons stated to have been present at those meetings with the prisoner and Lawler appear to contradict him. So that, gentlemen, comparing the whole of Lawler's evidence with all the other evidence which appeared in the course of the trial, they indented with each other so closely and consistently, without anything to contradict them, that if you believe the evidence, you cannot hesitate to conclude that the indictment has been fully substantiated. Gentlemen, the counsel for the prisoner have endeavoured to excite your humanity in favour of the prisoner's youth. Humanity, no doubt, is a commendable virtue; but, gentlemen, the attribute of mercy belongs not to a jury, when justice requires a verdict upon your oaths, according to the evidence. If the youth of a criminal were to warrant a jury in finding a verdict against evidence the most desperate conspirators against a state will have nothing more to do than engage the boys of a country in their plots, and if they be detected before the accomplishment of their purpose, the humanity of a jury is to intervene, and to screen them from public justice. Gentlemen, there is an instance in the conduct of the great Judge Foster, who was styled an humane judge, worthy of your attention. A boy of only seven years old was tried before that judge for murder. It appeared that the boy had been entrusted with the care of a child somewhat younger than himself, and upon a quarrel arising, he had killed the child; sensible of his crime, and apprehensive of detection and punishment, he concealed the body in a dung-hill. Some suspicions arising from the account he gave respecting the child, the boy was locked up in a room until he should tell the truth: at the end of two days he acknowledged the murder, and discovered where he had hid the body. He was tried, and his years were urged in his defence. He was certainly of very tender years; but the learned judge observed that his hiding the body, and his prevarication in the account he gave, all marked his sense of the wickedness of the crime. The jury convicted him—he was not indeed executed, but respited from time to time, until at length he died in prison. Now, gentlemen, if, in the present case, you believe that the prisoner at the bar is so young or so silly as not to understand what he was about in the proceedings charged and proved against him; or that he was cajoled or enticed to swear oaths, and administer them to others, and to attend meetings of Defenders, for the purpose of seizing arms to assist the French, and all this through mere simplicity, inadvertence, or ignorance of the guilt; there, to be sure, his youth would deserve consideration. But this is scarcely possible to conceive. You must, therefore, gentlemen, throw all false and partial considerations out of your mind—you must arm your judgments with manly feelings, and if you have no doubt, such as rational men may entertain, you will do your duty like conscientious men, and find the prisoner guilty. But, if on the contrary, you should entertain such a reasonable doubt, it will be of course your

duty to acquit him. The verdict will be yours, not that of the court, and upon your consciences it will rest.

Mr. Justice CHAMBERLAIN, and Mr. Baron GEORGE declined adding any observations to the jury.

About two o'clock in the morning of the 23d, the jury retired, and after deliberating for twenty minutes, brought in a verdict of Guilty ; but recommended the prisoner as an object of mercy, on account of his youth.

The court then adjourned to ten o'clock on Wednesday morning.

WEDNESDAY, February 24.

Patrick Hart was this day put upon his trial, upon an indictment similar to that which is set forth in the case of Thomas Kennedy, and therefore it is thought unnecessary to state it particularly.

The following Jury were sworn,

Nathaniel Trumbull, jun.,	Francis Kirkpatrick,
William French,	Thomas Black,
William Lancake,	George Simpson,
Thomas White,	Matthew Nixon,
George Pillsworth,	J. Hawthorn Grier,
John Ferns,	John Thompson.*

Mr. SOLICITOR-GENERAL.—My lords and gentlemen of the jury, though called on at the instant to state this case, I will not make an idle affectation of being unprepared. Instead of forgetting at this time, so soon after the late trials on the same subject, I doubt, whether I ever shall forget the important facts which this trial, like the former, will produce. They are not novel to me, though they must again be explained to you—but conscious as I am of the extreme fatigue which your lordships have already undergone, I shall endeavour to bring the case within as narrow a compass as possible. It is very likely, gentlemen, that you may have heard a great deal before you came into the box, but I will caution you, not to suffer your minds to be influenced by anything but what shall appear on the present trial in evidence upon the several charges in this very serious accusation against the prisoner. Gentlemen, the indictment is of considerable length. It has been deliberately and correctly read by the officer. Therefore, it is only necessary for me, in order to direct your attention, to state, that notwithstanding the length of the charge and the difficulty that might apparently be attendant upon an investigation of an indictment of such long and complicated formation, the case may be

* In swearing the jury, several challenges were taken on the part of the prisoner, for want of freehold. Some doubt was entertained, whether this was a good cause of challenge in the city of Dublin. The Attorney-General declined making any point, or arguing the objection, and the court directed the persons challenged to be sworn, to answer whether they had freeholds in the city, and such as answered in the negative, were not sworn upon the jury. By the 3 and 4 William IV. c. 91, s. 20, it is specially provided that if a person be otherwise qualified according to the requisitions of the Act, want of freehold shall not be accepted as good cause of challenge either by the crown or by the party, nor as a cause for discharging the man so returned upon his own application.

simplified to two charges, which, if proved, will bear upon the prisoner. Gentlemen, under that remarkable statute of 25 Edward the Third called the Statute of Treasons, which although it has been acted upon for many centuries in England, has not been brought into familiar notice in this country, till modern times—I say under that statute of Edward the Third, we are now regulated, not only in framing the accusation in cases like the present, but we are directed in the course of evidence necessary to bring home guilt to the party accused under that statute, and by cases solemnly adjudged upon trials of a similar nature. True it is, gentlemen, that the crime of which the prisoner stands charged, is peculiar in its nature, and different from other crimes known to the law, because under the statute which I have mentioned, the bare imagining, and intending of such crime as is alluded to, is the completion of the crime, if that intent be manifested by overt acts laid in the indictment, and sufficiently established by evidence within the statute. Gentlemen, it is unnecessary for me to labour the point to shew you, with reference to a person charged with adhering to the King's enemies, that if the person so accused can be shewn to have seconded the endeavour of the King's enemies, at open war with the King, in such a manner as to have invited them to invade the kingdom, to have associated with others, and enlisted men to raise an armed force, to second the invaders when they should arrive, he is manifestly guilty of such adhering. It is settled law, that such a case will not only go to establish the treason of adhering to the King's enemies, but will in its consequence go to prove the other charge of compassing the King's death; because the enemies of the King being invited to invade the kingdom with an armed force, and a force being raised here with a view of forwarding their purposes, to dethrone the King and overturn his government, that necessarily calls after it the death of the King, under whose auspices, as head of the state, and as supreme executive magistrate, this constitution and government is preserved, and we possess and enjoy our liberties and existence. So much, I should hope, will be enough, as to the general heads of the accusation. But in order to establish those general heads of accusation, it has been necessary also to lay certain overt acts—eight of which are set forth in the indictment, in order to bring home guilt to the prisoner at the bar. Of these overt acts, gentlemen, the one to which I shall direct your attention in the first instance, is that of associating with a body of men called Defenders—confederated together with an armed force to second the invasion of the French, at open war with the King; and in case they should invade this kingdom, to forward their attempts in overturning the established government of the country. Another distinct overt act is that of enlisting certain persons to promote that first purpose I have mentioned, and is a necessary corollary to it, by which leading primary intention, both are connected and combined for the purpose stated in the indictment. Another overt act to which I shall direct your attention, is that of administering an oath, which oath, together with a catechism (for I take them together as one instrument) upon the face of them, shew, that the other purposes and overt acts which I alluded to, will rest not merely upon parol testimony, but will be established by written

and irrefragable proof, so as to give demonstrable certainty of the great feature of the case, the decided existence of a foul, horrible treason, which is the subject matter of your enquiry. Gentlemen, it will establish this fact beyond controversy, in the first instance, namely, that the treason did exist; and secondly, that the prisoner participated, and was an active sharer in the guilt. You are aware, gentlemen, that in taking this line, I am shortening the course of your investigation, in order that your attention may be compressed as much as possible to this point, to which the evidence is immediately applicable. I come now, gentlemen, to another part of the case, and that which falls more immediately within your province to investigate, and decide upon—I mean the nature of the evidence which will be brought forward to establish the guilt of the prisoner at the bar. Gentlemen, it will appear to you, that this infatuated and deluded man, and if I am rightly instructed, that unfortunately wicked person at the bar, had his mind so heated, so perverted, so contaminated by the treasonable pursuits in which he was engaged, that he had confederated himself with that body of men called Defenders, who have infested this country for four or five years past, under that particular denomination which has brought shame and disgrace upon this kingdom—so that nothing but the wholesome administration of justice, can induce any man to reside here, or ever make you worthy again to invite strangers to hold commercial connexion with you, by giving stability to your credit or security, for the enjoyment of the sweets of honest industry. I understand the prisoner at the bar is nearly connected with people of business in this metropolis, and has been bred up to the trade of a skinner. It will be proved that within this, your metropolis, there have existed within this short time past, a number of societies all co-operative to one abominable mischief; who, through their different gradations of guilt, at last concentrated the carrying into execution their wicked and traitorous intentions in that body of men called Defenders, of whom the prisoner was one—not a passive member submitting to the directions of others, but taking that leading, decisive and commanding part which belongs to a committee-man, and a leader in their discipline and counsels—an office which he held under the treasonable sanction of his engagements, formed upon the systematic plan of these societies, confederated for purposes the most horrid, and most formidable to the safety of the community. It will appear that this body of men, under the combined efforts of the malignant intervention of foreign missionaries—of domestic disaffected men—of the industrious assiduity of persons engaged for some years past in attempts to overturn the state, and to bring destruction upon those men who wish well to the good order and law of the country. This unfortunate man at the bar having embarked in the guilty purposes, and heated and inflamed with all the abominable mischief growing out of the circumstances I have mentioned, exerted himself with such activity, as to be entitled to that denomination I have stated—that of a committee-man. It will appear that these persons called Defenders, of whose confederation you will have decisive evidence from the oath and the catechism, could have nothing else in view than the object of embodying with France, and to deluge the country with blood and confusion. The oath and the catechism specially prove it. The association met

at several places, they enlisted men under the perverted sanction of a sacred oath—appealing to God, and binding themselves by an engagement, they laboured most assiduously to increase their numbers—they met in several places—they had their assemblies, their laws, their courts-martial, and their committee-men—subscriptions of money—arms provided by plunder—and by those means endeavouring to carry into effect their guilty purposes, so as not to leave the possibility of a doubt upon your minds as to the general intent. The prisoner Hart, appears to have had more than a common share, even as a leader and committee-man. The witness who will be brought forward to support this charge, has been already examined in the course of several trials. The same witness upon whose testimony the case will principally turn, will be now brought forward, and will prove the numerous meetings at which Hart attended—that he appeared at the head of some of them as an authoritative person, announcing to the whole body, what the guilty purpose was. At some meetings powder and ammunition were provided. Hart will appear to have been an active man in swearing individuals, one of whom was reluctant, until he heard the purpose of the engagement. The meeting at which that transaction took place was at Stoneybatter, and there a person was brought in to be sworn—Hart was presiding as a committee-man. He told the novitiate that the object of engagement was to aid the French when they would land, and for that purpose they were to plunder the country of arms to be prepared for their arrival—you are, said Hart, to obey all the mandates of the committee, and to be confederated with us upon oath—which oath he accordingly administered. Gentlemen, at that very meeting at Stoneybatter, an engagement was entered into, upon a difficulty appearing whether they were sufficiently armed to go out and plunder. “You must go back,” said he, “and fetch your arms.” Then a delay took place, some did not return, and it appearing there was not a sufficient number attending, Hart called upon those who were in the room, and desired them to lay their hands upon the table, and swear by their solemn engagement to attend the next night, to be fully armed for the purpose of plundering the houses of the peaceable inhabitants in the confines of Dublin. It has appeared, that upon that very night when the confederation was entered into, a robbery was committed at a neighbouring house, which was plundered of arms, and those arms were found in the possession of Hart, when he was taken up. Those arms were plundered for the purpose of assisting the French, when they should land. Gentlemen, there is another alarming circumstance, which will come out in proof, and therefore I state it, though I wish to be relieved from the pain of it. It is so horrible in its nature, that we do not wish to impute it to the body of the Catholic persuasion; but there have been men abandoned enough to inflame and exasperate religious prejudices, and that wicked principle is imputable to the prisoner, who out of his own mouth must be judged. It will appear, gentlemen, that at one meeting of Defenders, associated for the serious purpose of enlisting, embodying and becoming formidable by military array, a conversation arose, in which the witness wanted to know all the purposes of the association, which Hart, as a confidential committee-man, avowed himself entrusted with—upon that occasion Hart told the witness, “our intention is to get

arms from those who have them, and after we are thoroughly prepared, to massacre and put to death the Protestants of the country." Here he avowed the horrid scheme. Gentlemen, I have thought much upon this subject, and I cannot bring my mind to suppose, that so atrocious a malignity could exist in the minds of any body of men, as a deliberate purpose of murdering their Protestant brethren, and at this time, when we are receiving with open arms, by every act of kindness and participation of benefit, the whole of our Roman Catholic fellow Christians; yet, some there are, who would make religious enthusiasm an excuse for the foulest crimes, with that horrid malignity with which Hart's mind was inflamed and was full. Much industry has been used to persuade the bigotted and uninformed Roman Catholic, that his situation is such as calls for outrage as justifiable, because that he cannot accomplish abolition of tithes and reform in parliament: but there is no sensible Roman Catholic that must not be convinced that he is in the full enjoyment of every blessing which the constitution can give; and that it is high time to teach the conspirators against that constitution, that every honest man of every religious persuasion, joins to suppress that spirit of delinquency and outrage. Gentlemen, I shall now state the papers very shortly, which were found on the prisoner, and which speak trumpet-tongued to your understandings. The evidence, if established, is in its nature, not fallible; it consists of written documents, found in the possession of the prisoner, and are not subject to those objections imputable to evidence of another kind, where the fallibility of memory could deceive.

One of these papers begins in these words, "I do swear that I will be true and faithful to the present United States of F. and I. and every other kingdom now in Christianity, as far as in my power lies, without hurting my soul or body, as long as they prove so to me." Then it goes on, "And more I do swear, that I will be true to my committee and brothers, that is to say, in supporting the right and privileges of the United States of the kingdom, now in brotherhood." "More, I swear, that I will not come as an evidence against any of my brothers, in any cause whatsoever, except on a court-martial, held by our committees on pain of exclusion, or death whichsoever is deserving." The dreadful tendency of those engagements will be matter for your consideration. These papers were found in the prisoner's box—in another box was found a blunderbuss, and several rounds of ball cartridge, so that he appears to have had arms in one box, dangerous papers in another, and treason in his heart. Gentlemen, you will consider the whole of this case, and if there be a hinge left to hang a doubt on, I join in the recommendation to acquit the prisoner. If you find Lawler, the witness, trip or equivocate in any one point or circumstance, you should never find the party accused guilty. But, gentlemen, if you find the witness perfectly consistent, and if the learned counsel, whose duty it may be to cross-examine him, cannot, under all the advantages of former disquisition involve him in inconsistency, and if he shall be supported, as I am bold to say he will be, by a train of corroborating facts which could not exist were not the principal charges well founded, it then only remains for you to perform that duty which your country has a right to demand

at your hands, and I trust that no consideration will warp you from the important obligation which you are bound by your oaths and on your consciences to discharge.

William Lawler, sworn.—Examined by Mr. KELL's.

The general tenor of the witness's testimony being the same as upon the former cases, it is omitted, to avoid repetition. The additional matter was the private conversation with Hart, the prisoner, which was inadmissible evidence, as against the former prisoners.

He said, he met the prisoner at Nowlan's, in Drury-lane ; it was on Sunday the 23d of August, after the meeting at Stoneybatter ; it was a society of Defenders ; there were more than twelve at the meeting ; it was about seven in the evening. The prisoner asked witness if Coffey and Dry were not Protestants—witness answered, he believed they were ; the prisoner said he would not sit in company with them ; the reason the prisoner asked him was because he was acquainted with them both. The prisoner asked witness what religion he was of?—witness answered he was a Roman ; the reason he said so was, because Brady told him when he went to be sworn, to say he was a Roman, for that they had an objection to admit Protestants. Witness asked the prisoner his reason for asking the question so many times ; prisoner said because he would not sit in company with a Protestant. That the night before, the Defenders were to have risen, but on account of the harvest not being got in, it was deferred ; for if the harvest should be destroyed, they would be starved, but as soon as it was got in, they would rise upon the Protestants, and put them to death, and that the forts would be attacked at the same time ; he meant by the forts, the different garrisons in Ireland. The prisoner said he would call a committee of twelve men, and that Lockington should be made a prisoner, and they would then consult what death they would put him to, for having brought Protestants among them ; the prisoner was then called to order by Coffey, who was in the chair ; Coffey wanted to know what number of Defenders there were in Dublin, that they might be officered ; the reason the prisoner and the witness were called to order, was because they were from the table, and at the window ; witness met the prisoner on the following day in the Liberty, there was a young man with him, who the prisoner said was a Defender ; he shook hands with the witness and pressed witness's hand with his thumb, which was a sign that he was a Defender ; the prisoner asked witness if he had any ball at home, or if he knew how to make ball cartridges ; told him he did, and that he had ball at home ; prisoner gave witness some gunpowder, about half a pound, and desired him to make cartridges, and let him have them in the evening ; witness asked the prisoner if there were four hundred Defenders in Dublin ; he said there were four thousand if they were got together ; they then separated, and witness went to Dry's in Cork-street.

The oath and catechism found upon Kennedy were read, after which the witness said, he wished to mention something to the court. One of the witnesses, said he, who appeared on the last trial, was the man who lent me the case of pistols when I went to the watch-house, and when I went to Stoneybatter.

Q. (By the Court.—What is the name of that man? A. Gallan, of Crane-lane. He lent me a pistol when I went to Stoneybatter.

Q. Who has that pistol now? A. It can be got by sending for it. Whereupon the pistol was sent for.

Cross-examined by Mr. LYSAGHT.

Witness saw another person who came to discredit his testimony, who did not lend him a pistol; could not say anything of the man; his wife told him he was the person who melted down the bullets; could not say Mr. Robinson was a good man; he used witness more like a servant than anything else; was not taken by him through charity; last saw his father in England, his father was not a member of any of the Corresponding Societies; witness had been frequently in company with the prisoner. It was said at Hoey's-court, when they should rise, that the first persons they should put to death would be Jackson's jury. There was a society met at witness's room, and at Gallan's; Strephon and witness were the principals who induced them to go there; never said there was no God; Burke wanted the members to believe there was no Saviour; never heard that the society dissolved in consequence of witness's blasphemous expressions, for he never made use of any. When the petition of the London Corresponding Society was refused, some of them said, they ought to go to the throne with arms, and have what they wanted. One Baxter in London, asked witness if he had room for an hundred arms, and if he would meet some of the members at Turnstyle, Holborn, and learn his exercise, as the Sheffield members did. Witness administered oaths to some people, but they were not children; some of them were apprentices; could not say how old the little boy was that he swore in Castle-street; was more than ten years of age; if he were produced, he might guess; did not know his name; the youngest he ever swore was seventeen years of age; it was a rule not to admit any members under eighteen; there was one James Steward, who used to carry about the books; never swore a boy with a pistol to his breast; was asked before about it, but it was not true; witness did venture to deny it upon a former trial; heard the Telegraphic and Philanthropic Societies consisted of one hundred; could not tell how many Protestants; there were Protestants and Romans in the Philanthropic Society; witness used frequently to work on Sunday; did not attend church, when he thought it no crime to kill the King; did not go to church at the time the pistol was fired into the watch-house; there was an intention of liberating the recruits in a crimping-house at the corner of Bull-alley; did not know how much bounty he got, when he enlisted; witness's brother changed his name to John Wright; is now in Chester; witness liked the prisoner as a Defender when he belonged to them; never declared, since he was taken up, that he would rather hang the prisoner than any of them. The members of the Philanthropic Society were divided into four divisions, and there were thirty-five in each division; did not believe the prisoner was a member of the Philanthropic Society.

Alderman James, sworn.—Examined by Mr. PRIME-SERJEANT.

Granted a warrant against the prisoner, to Mr. Philip Henry

Godfrey, grounded upon informations from Lawler, who gave a description of the different persons and where they would be found.

Cross-examined by Mr. M'NALLY.

Took Lawler's examination upon the 27th of August. Atkinson was arrested upon the 24th; witness went to the Liberty, where he saw near three thousand people, who dispersed upon seeing him and the army. Had information there was an intention to attack the castle and the bank; had information from Lawler and other persons; did not take the information of those other persons upon oath, because they did not wish to have their names made public; their information agreed with that given by Lawler; Lawler did not say, he was one of the party to attack the Chancellor.

Philip Henry Godfrey, sworn.—Examined by Mr. WORTHINGTON.

Received a warrant from Alderman James, to apprehend the prisoner and several others, and accordingly went to the house where the prisoner lived; broke open the street door with a sledge, went up stairs, found the prisoner and another boy in bed; took a paper, or parchment out of the prisoner's breeches pocket; knew they were his breeches, from his having told the witness so; they were not the breeches which the prisoner put on; found some parchment and papers in a box in the room; a broken blunderbuss, and about twenty rounds of ball cartridge; witness did not inquire whose the box was; nor did he know.

Cross-examined by Mr. LYSAGHT.

Did not know of any threat, or promise held out to the prisoner; witness did not hold out any; would not answer for what the persons about the prisoner might have done. On the way to Newgate, the prisoner told the witness that the breeches were his; he also said he was a sworn Defender, but was sworn by compulsion, and had the parchment forced upon him; witness did not know, nor could he form a belief, whether Lawler visited the prisoner at the house where he lived.

[Here the parchment found in the breeches pocket was read, and was as follows:—]

"I, A. B., do in presence of God, swear of my own free will and accord, that I will be true to the present United States of F—— and I—— and every other kingdom now in Christianity, as far as in my power lies without hurting my soul or body, as long as they prove so to me: and more I do swear, that I will not go with any robber or thief, or any person that is suspected to defame our society in any character whatsoever, or keep such people company, if to my knowledge I know it: and more I do swear, that I will be true to my committee and brothers, that is to say, in supporting the rights and privileges of the united states of the kingdom now in brotherhood, or may be hereafter, and that I will not wrong any of my brothers to the value of twopence sterling, to my knowledge: and more I do swear, that I will not come as an evidence against any of my brothers in any

cause whatsoever, except on a court-martial held by our committees, on pain of exclusion or death, whichever is deserving: and more I do swear, that I will not strike or ill use a brother in any respect; and that if I see a brother struck or ill used, I will aid and assist him as far as in my power lies, if in a just cause, if to my knowledge he is a brother; and all brothers is to live lovingly and friendly together, and to have no quarrels or disputes whatsoever, and he that does, is to be excluded as long as the committee thinks proper, and to avoid such things, you are not to play at any sort of gaming with any of your brothers for more than sixpence sterling at one time: and more I do swear, that I will help to support a lawful well inclined brother in all distresses whatsoever as far as in my power lies, without hurting myself or my family, and that I will meet when and where my committee thinks proper, and spend what is agreeable to my committee and company, and that monthly or as the committee thinks proper, and this article is according to the united states of the kingdom."

Signed by order, or of the
head committee of F. & L.

Mr. M'NALLY objected to the reading of the papers found in the box; they were not proved to be the prisoner's hand-writing, nor was the box proved to be his property.

The COURT said the papers found in the box could not be read.

Oliver Carleton, Esq., sworn.—Examined by Mr. RUXTON.

This witness repeated the testimony he had given in the former cases.

Evidence for the crown closed.

Mr. LYSAGHT.—My lords and gentlemen of the jury, I have been very suddenly called on to-day (as I was also on the last trial) to defend the unfortunate prisoner at the bar; the very able and eloquent advocate, who had been assigned one of his counsel, having been prevented by avocations elsewhere, I presume, or some other justifiable reasons from attending. And I feel this disadvantage the more strongly, inasmuch as the facts charged against the prisoner at the bar, are of a very different nature from the facts charged against those for whom I had been originally assigned counsel. I likewise feel much discouragement in my own mind, and am diffident of its executions from reflecting that I have the misfortune to differ in some degree from the Bench, in my conception, both of the nature of the evidence, and the law, applicable to the facts which were thought to have appeared on the last trial—the trial of Kennedy.

I feel all due respect for the bench, and trust it is not inconsistent with that sentiment to say, that their lordships are to fulfil a very important and awful duty; they are to decide the law and to be adjudged by the present generation, and by posterity for such decision, on cases of singular nicety and acknowledged novelty. As to matters of fact, you, gentlemen of the jury, are to be assisted and advised, but by no means governed or controuled by their lordships. The court which I have the honour to address, will tell you that by our happy constitution, you are to determine matters of fact, as they are to

determine points of law resulting from, or arising out of the evidence ; therefore, should any judge on any trial, labour hard for hours, and argue strenuously to make strong impressions on your minds, analyze, sift, doubt, question and consider fully such argumentative charge ; and should you feel a different persuasion from that sought to be stamped on you—away with all false delicacy and culpable veneration for the bench. Judge for yourselves—prefer your own judgments—assert and vindicate, and maintain the undoubted rights of juries. In this respect, I mean the authority and supremacy (if I may use the expression) of juries, the wisdom of the law is manifest. Judges of the land are enveloped in abstract studies ; their minds pure and lofty, are filled with lucubrations of twenty years, and incessant contemplations on the book of science. You, gentlemen, are conversant with the transactions of ordinary life, and have daily opportunities of reading every diversified page of human disposition, habit, and character ; and are, (I say it with great respect to the court) more competent than a jury composed of twelve judges could be, to try matters of vulgar incident and grovelling fact.

Gentlemen, having said thus much, I shall concisely and strictly consider the facts which have appeared in anything like credible proof this day against the prisoner at the bar—the Solicitor-General, who stated the case for the crown with great candour—has told you that the evidence on which only you should convict the prisoner, ought to be such as could leave not a hinge to hang a doubt on—the expression does him honour—meet that idea gentlemen, and even enlarge by your commentary on it, and add, that the doubt should be a reasonable one, such as a rational mind should give reception to. Go thus far and regulate your decision by that criterion, and I trust, that I need ask no more, I trust, that I shall fill a reasonable mind with rational doubt as to the prisoner's guilt. I shall not arrogate more to my humble talents—a more eloquent advocate could illustrate his innocence. My lords, and gentlemen of the jury, the unfortunate child at the bar, is indicted for two species of high treason, for compassing and imagining the death of the King, and for adhering to the King's enemies :—all of anything like credible evidence to support the indictment, is a paper said to be found in the prisoner's room, importing that the person reciting it, is to be true to the united states of F. and I.—F. and I. are stated by counsel to mean France and Ireland. The evidence, which I shall beg leave to call utterly incredible, is the testimony of Lawler. Now, gentlemen, in my humble apprehension, the barely having in one's possession, without publication, such a paper as that found in the prisoner's room, is not an overt act of adhering to the King's enemies, the paper contains no intelligence, there has been no attempt at proving any intended correspondence or communication with the enemy. Where do the prosecutors look for treason in this case, they are driven to explore the foulest place, the breast of an infamous witness—exclusive of the testimony of Lawler, nothing has appeared to fix treason or felony under the White-boy acts, or Defenderism, or even sedition upon the prisoner. The Solicitor-General, in stating, that the prisoner declared to Lawler, that his wish and design was to massacre all the Protestants ; said it shewed such malignity, that he could not believe it existed

in the minds of many men of this country. Merciful God, is such a witness as Lawler to be credited when he imputes such a sanguinary disposition to any person, to a boy of tender years! No; gentlemen, youth is not the season when that depravity seizes the heart. The poor prisoner must have been a fiend from his birth if he harboured such a thought. He must have been suckled by a tigress or hyena, and have served his apprenticeship among the cannibals in the human butcher's stall! No; gentlemen, the wretch who perjured himself for the paltry bounty-money given to recruits, is more likely to invent a falsehood under the influence of sanguine expectation of great reward, than a young boy of reputable connexions and good education, is to form the horrid scheme of murdering all the Protestants. Lawler told you the prisoner said he quitted one club because there were Protestants in it, yet he swears the same Protestant-hater got into another club, in which there were more members Protestants than in the former club. Lawler confessed that he fired a loaded pistol into a watch-house full of watchmen, and that he thought it no crime to murder his King. Is it not likely therefore, gentlemen, that this nefarious wretch, stained with perjuries, felonies, and treasons—insatiate of blood like the Renault of the poet and the Robespierre of inhuman memory—is not likely, I say, that the caittiff who would murder his King in the speculation of power, would invent the horrid tale of intended massacre, to facilitate the murder of a subject in the speculation and chance of reward. His consistency has been mentioned—yes, he is very consistent; for the printed trials of Weldon and Leary were probably in his hand, till he came into court—in his perjuries and execrable treachery he is consistent. Weldon is to die, by the evidence which a jury disregarded, though it was thus consistent on the trial of Leary. Kennedy has been convicted by another jury, who with great respect to them, I say it, possibly did not reflect that a witness of veracity might not be so minute in the detail, so circumstantial and consistent—in his insatiable thirst for blood he is consistent—I know not what measure of it will glut him, if you do not act with caution and mercy. Titus Oates was not less consistent—numbers of false witnesses have been as consistent—deluded juries and judges have been abused by their apparent consistency, and numbers of innocent men have fallen victims to it.

Gentlemen, you are not, I hope, to be misled by any description of the distracted state of the country, to give an unwarrantable, precipitate verdict of guilty, on a charge of high treason. If there be Defenders, there are statutes in force against them amply sufficient to curb such offences, and the punishment in many cases of Defenderism is death. Will you libel the nation by magnifying outrage, riot, or felony into treason? Do not preclude the reformation of the lower classes, by infusing into their minds a distaste for our invaluable constitution, which they indubitably will feel if the administration of justice be not pure, temperate and just.

I shall call witnesses of unimpeachable character to shew that Lawler deserves no credit on his oath in a court of justice. He has not particularized dates; we therefore cannot produce witnesses to prove an *alibi*—consider, gentlemen, the avowed infamy of the witness, and the extreme youth of the prisoner—in the case of William

Yorke adverted to on another trial, the murder spoke for itself and established criminality with a crying fact—but the crime imputed to the prisoner is a crime of intention, the proof of it is resting on the testimony of an infidel felon. Gentlemen, I have done, remember that the God who gave these favourite kingdoms so blest a constitution, delights not in human sacrifices.

William Rochfort, sworn.—Examined by Mr. M'NALLY.

Knows Lawler six or seven years; his brother served his time in the same house with the witness, and went by the name of Wright, before he went to England. Witness never belonged to any club, or society.

Cross-examined.

Had been summoned to attend the court—he attended in consequence of an indictment against him, at the suit of John Giffard, for publishing a print, entitled “Kennelling of the Dog.”

Nicholas Clare, sworn.

Gave the same evidence as in the former case.

William Ebbs, sworn.

Gave the same evidence as in former case.

Mr. M'NALLY.—My lords and gentlemen of the jury, it is not usual for counsel to have permission to address a jury on a matter of evidence, or even to state a case in the defence of a man on the trial of his life for a capital crime; for so rigid is the ancient rule of the common law, that except on collateral points of law, the court never assigned counsel. But the legislature, gentlemen, has by a humane and indulgent statute in favour of the people relaxed that rigour, and has given to a prisoner, who is charged with the crime of high treason, a privilege to demand the aid of counsel, who are in such cases assigned by the court. It is by the authority of that statute, gentlemen, that I now have the honour of addressing you on the part of the prisoner at the bar. But, gentlemen, I have to regret that the act to which I have alluded, has not in every particular and provision followed the wholesome English statute for regulating trials for high treason, of which it is but merely a short abridgment; for if the Irish act followed the English statute, I should not now have any occasion to address you on the part of the unfortunate youth standing at the bar; for, by the English statute it is provided, that in all cases of high treason, where corruption of blood is the consequence of a conviction, there can be no verdict of guilty unless there be at least two witnesses produced by the crown to support one overt act of treason, or one witness to one overt act, and a second witness to another overt act of the same species of treason, so that in the present case, if the English statute had been fully adopted by the Irish legislature the prisoner at the bar must be acquitted in point of law, as there is but one witness produced to support the overt acts of treason charged against him in the indictment. God forbid! gentlemen of the jury, that I, or any Irish lawyer should dare to insinuate that English statutes should have authority in Ireland without the sanction of the Irish parliament. But principle is immutable; principle is the same in both countries, and I trust I have a

right to tell you, that in considering your verdict this day, it will be your duty to apply the principle of English jurisprudence to the present case. A great and a learned writer has laid down the principle, that makes two witnesses necessary in cases of high treason. Gentlemen, I will give you his words. He says, "in cases of treason, there is the accused's oath of allegiance to counterpoise the information of a single witness, and that may perhaps be one reason why the law requires a double testimony to convict him;" though "the principal reason," continues the learned commentator, "undoubtedly is to secure the subject from being sacrificed to fictitious conspiracies which have been the engines of profligate and crafty politicians in all ages." Gentlemen, I do not mean to apply the words "crafty politicians" in the same manner they are applied by the learned judge, whose words I have just quoted. I do not mean to apply them to any of the persons carrying on the business of government in this country. No, gentlemen, the "crafty politician," whom I intend to make the object of your serious consideration, as I am well convinced he is of your abhorrence, is Mr. William Lawler, the witness who has this day made his fourth appearance in this court. Gentlemen, it is clear that he is the "crafty politician" who was well versed in acts of deceit before he left England. It was there he became tutored in vice—it was there he noviciated in the acts of hypocrisy and dissimulation, and from thence he returned into this, his native country, a corrupter of our unsuspecting and unwary youths. Like Satan who scaled the gardens of Eden, and having instilled the poisons of sin under the pretence of communicating knowledge into the ears of innocence, abandoned the deluded victims of his diabolical subtilty and deceit, to death and perdition. Gentlemen, as we have adopted the English constitution, we have a right to decide upon its principles. In England, one witness, though immaculate as an angel, could not convict a person charged with high treason, and will you, gentlemen, establish, by a verdict of guilty, that in Ireland the tainted breath of a fiend, which in England could not agitate a feather in the scale of justice, shall start and blast from the face of the earth one of God's creatures! It may be asked what could have been Lawler's motive? I answer—God, the searcher of hearts, can only know the motives of this devil, in first seducing his proselytes, and then betraying them to death. He has said, repentance was his motive, but I rather conceive it arose from the impulse of fear. Gentlemen, his object for instituting societies however is plain. The bank was one of his objects—so says Alderman James—could he have but persuaded those that he had seduced to have assisted him in plundering the bank, his object would have been fulfilled, and under another fictitious name he would have fled elsewhere to enjoy his plunder, and meditate on fresh enormities.

Gentlemen, permit me to trespass a little further on your indulgence, permit me to solicit your serious attention to Mr. William Lawler, the prosecutor, and to the prisoner. In the one you see an adept in wickedness, which could only result from a polluted heart and spotted soul. In the other, you view a boy who from his youth must appear to you a novice in politics and in offences; and if you should believe that he has been misled and fallen into error, surely you will not visit the sins of the seducer upon the head of the seduced. I will venture

to argue, gentlemen, that from legal principle you ought not. Gentlemen, you have heard the confession made by Mr. Lawler, the witness. What confessions have you heard him make? You have heard him confess to the commission of felonies, of conspiracies, and of perjuries. Now, gentlemen, I maintain, that by the law of the land if Lawler had been convicted of even one felony, one conspiracy, or one perjury, by producing the record of conviction of either of those crimes, the court would be bound to prevent him from giving evidence on the ground of incompetency arising from infamy, and you would be bound to acquit the prisoner for want of evidence. Competency is a question of law, it is to be determined by the court, but after the court have determined upon the competency, and the witness is sworn, then arises the question of credit, and that question depends solely on the determination of the jury. From these premises I draw conclusions, which I submit to your deliberation. I submit that every juror amongst you must from the perception of your own reason, consider Lawler in no other light than as a convict—you must from the evidence of your own senses, for you saw and you heard him, consider him as convicted on his own confession, the strongest evidence the law knows when applied against the party confessing, though the weakest and most suspicious when made use of against a second person. I say, that Lawler, on his own confession, stands a convict before you of one felony in attempting to murder a watchman, by discharging a loaded pistol into the watch-house—of one conspiracy to murder the Lord Chancellor, and of one other to murder a witness who was to give evidence on the part of the crown. Perjuries are also recorded in the black schedule of his crimes, and of those you are also in possession by the strongest proof possible—his own confession. If, then, gentlemen, you believe this witness guilty of those crimes which he has himself confessed, does he not stand before you as a convicted felon, and of course as infamous and as villainous as if he had been regularly tried and found guilty by any other jury? I repeat it, gentlemen, if this miscreant had been convicted by another jury, you, gentlemen of the jury, could not this day have heard his testimony, the law would have arrested his evidence, for the court could not legally, and therefore would not have submitted him to have undergone an examination; and I say, it follows of course, that if you are bound to hear his testimony, he not being an incompetent witness, yet you are also bound to reject his evidence, he not being worthy of credit; for the same principle that rules the court on the question of competency, should, from analogy and principle, rule the judgment of a jury on the question of credit.

Gentlemen, three witnesses have been produced on the part of the prisoner, and they, from a knowledge of the general character of Mr. Lawler, the witness, from a knowledge of his impiety and immorality, have positively deposed, that he is a man of so infamous a character, that he ought not to have credit on his oath, giving evidence in a court of justice. Gentlemen, an attempt has been made by the counsel for the crown to impeach the testimony of those witnesses, it has been shewn on a cross-examination that one of them was a member of the Telegraphic Society at a time when its purposes were merely confined to reading; but does that affect his credit? or if it did, are there not

twelve other witnesses who do not belong to any society, well acquainted with his general character and infamy? Gentlemen, the twelve witnesses I speak of are yourselves. Gentlemen, let me entreat of you when you retire from your box to deliberate on your verdict, to ask each other, whether this fellow is not of a most infamous character? Whether you have not full evidence before you from out of his own mouth, of his infamy, and whether you, as jurors upon your oaths, with the internal knowledge of his guilt in your minds, can give evidence to the testimony of so abandoned, so infamous, and so impious a wretch upon his oath?

Gentlemen, you have heard a great deal of the consistency of this witness. My learned friend, Mr. Lysaght, has made several pointed and judicious animadversions on this subject; I shall, therefore, only trouble you with one or two more. From what cause does this consistency proceed? Is it the emanation of a cool, collected, ingenuous, and virtuous mind? No! An honest man in giving evidence to affect the life of his fellow-creature, to affect the life of a boy, whom he had described as having been once his confidential friend, would evince compunction and feeling, he would give his evidence with trembling, and apprehension, he would not have shown a promptitude to answer, an eagerness to explain and connect, arising from a pre-determined intention to convict. Gentlemen, the witness is well-experienced and perfect in the part he has this day acted on the table. He has been examined on the different trials, these trials have been printed—he has read them with attention, he has studied his *vade mecum* of evidence, and now comes into court fully instructed and prepared from his printed briefs. I will now show you in what Mr. Lawler has not been consistent. He has suppressed and he has extended his evidence to answer his views. He has this day gone further before the court than he ventured to go when he gave his informations before Mr. Alderman James; he, on that occasion, suppressed the intended assassination of the Lord Chancellor, he suppressed the intended assassination of Cockayne, and would still, no doubt, have suppressed his knowledge of those diabolical conspiracies if I had not extorted a confession from him on his cross-examination on a former trial. Gentlemen, his suppression of dates is most material, for except in one instance, this witness of extraordinary memory has recollected but one date. The intent of this cunning is manifest. Had he sworn to dates the prisoner might have proved an *alibi*, that is, gentlemen, he might have shown that on the day sworn to by the witness, he, the prisoner, was in another place; but the witness, by artfully omitting the day, has precluded the prisoner from defending himself from any charge depending on time or locality.

It is unnecessary for me, gentlemen, to engage your time by entering at large into the law of the case, the court will fully instruct you on that head, but the determination lies with yourselves, for I venture to say, that no lawyer will controvert the right of the jury to determine on the law as well as on the fact in a criminal case; to take both together into their consideration, to determine upon both together, and to found their verdict on both is the established and indubitable right of a jury. This leads me, gentlemen, to take a slight view of the indictment, in doing which, I shall anticipate an observation that

may be probably made this day, because it was made by the counsel for the crown on a former occasion, and the case of Doctor Hensey, as convicted in London for high treason, was mentioned to support it.

Gentlemen, the indictment which you have heard read, and which you are to decide on, consists of two species of high treason. It first charges the prisoner with compassing the death of the King; and secondly, it charges him with adhering to the King's enemies. As to the first charge, I conceive it has not been supported. And as to the second, as I presume, the counsel for the crown rely upon it, to it alone will I call your attention. The overt acts in this species of treason to be found in the books, are these: giving intelligence to the enemy; selling them provisions; selling them arms, or surrendering to them a fortress.* In every trial I have seen on this species of treason, there has been evidence of a connection, a reciprocity between the parties charged as traitors and the enemy, but you have not had a scintilla of evidence laid before you to shew the slightest communication between the prisoner, or between the persons denominated Defenders and the King's enemies, "the persons exercising the powers of government in France," nothing even like agencies has been given in evidence. In Florence Hensey's case, quoted by the Chief-Justice on a former trial, there was actual evidence given of his correspondence with a minister of France. In De la Motte's case, it was proved, that through the medium of agency he communicated intelligence to the enemy, and in that case it was said, that the prisoner by entering into a conspiracy, to send intelligence to the French, was not guilty of high treason, but that the intelligence which was sent must be laid before the court by legal evidence. Now, here the evidence goes no further than a bare conspiracy. In Jackson's case, recent in every man's memory, letters delivered at the post-office, intended to be transmitted to foreign parts, containing a description of the situation of this country for the use of the enemy, were arrested in their progress in the post-office. Gentlemen, have you any evidence similar to this in the case before you? No; in all the above cases the treason was consummate. In the case before you, the treason is inchoate. In the offence of compassing and imagining the King's death, wise and eminent lawyers have certainly held that evidence of the intent substantiated the crime, but no lawyer has as yet ventured to advance, that an intent to adhere to the King's enemies substantiated the offence of high treason, and gentlemen, I do insist, that should you believe every word Lawler has sworn, and the construction the King's counsel has put upon the papers produced, an intent to adhere, or a conspiracy to adhere, and no more, has been given in evidence. I will go further; I will venture to maintain; that the indictment does not charge a substantial treason. Gentlemen, attend to the overt act. It charges that the prisoner, in order to enlist William Lawler, a liege subject of the King, to be aiding and assisting the persons exercising the powers of government in France, being enemies, in case they should invade, or cause to be invaded, this kingdom, administered or caused to be administered, an oath to

* Foster states the circumstances which will amount to an adherence to the King's enemies; Crown L. 217.

said Lawler, and swore said Lawler to a certain profession, declaration or catechism, to the purport following, &c. Now, gentlemen, this I say, goes no further than to shew an intent to commit treason, there is no positive adherence to the King's enemies shewn by this overt act; the worst that is shewn is an intent of conspiring to assist them on the completion of an uncertain event, the event of their invading or causing to be invaded, this country, an event which I trust in God, never will take place, or if such an attempt should be made, that it will be rendered abortive by the spirit of Irishmen and the discomfiture of the foe.

As to the papers, I am well aware, you will hear much on their meaning from the learned counsel who is to reply on the part of the crown, but whatever constructions he may put upon their contents, or whatever constructions you may apply to them, it will be your duty to recollect, that they were permitted to be read, not as evidence connected immediately with the prisoner, but as evidence to shew an existing conspiracy, and the existence of a conspiracy is not of itself legal evidence of treason or of guilt against the prisoner; nor is there any evidence before you that he had any knowledge of these papers, they are not offered as being in his hand-writing, they are not offered as being found in his possession. But the parchment was found in a room wherein Mr. Godfrey, constable of police, swore the prisoner lay. How is that accounted for? Mr. Godfrey told you he spoke to him on the subject, and that he had been sworn by compulsion. If you take what he said to Godfrey as a confession, you must take the whole of that confession, and in doing that, you must take such facts and circumstances as make for the prisoner as true. Gentlemen, it must be known to some of you, that persons of the first character in the country have been compelled to take the Defender's oath, at the risk of losing their lives if they refused, and therefore there can be nothing fanciful or ridiculous in my asserting that it is not impossible, but the prisoner was forced against his will to take an oath, and that at the same time the parchment produced, was put into his hand. You must have observed that Mr. Lawler is blessed with a most accommodating memory, he can extend or contract it at pleasure; with the most extraordinary tenacity he remembers every conversation he held with the prisoner, not forgetting a single interrogatory, or answer. I say, he has a recollection for all occasions to serve him when necessary, to revive, to come, to go at pleasure. He perfectly recollects swearing an infant, but he cannot remember either his age or name. He perfectly recollects administering an unlawful oath of secrecy to him, but he cannot remember, whether he administered the oath with a pistol to the boy's breast. He cannot recollect whether this boy was ten or eleven years of age, but he could tell his age if he saw him, and then, forgetting this circumstance for the purpose of injuring the youth at the bar, he cunningly swears he never administered an oath to a man of less than seventeen years of age. Gentlemen, if I do not go fully into this case, it is not from want of zeal or attention to my client: this is the fourth time I have had occasion to address a jury on the subject of Mr. Lawler and his enormities. The human mind becomes languid by repeatedly thinking on the same subject, and when the subject is like the present, the

mind becomes disgusted. Indeed, gentlemen, I had forgot this is the first time I have had the honour of addressing you, and from an apprehension of wearying your patience, will probably leave unobserved, many material points. But, gentlemen, I feel consolation when I look to that bench, because I know the great and enlightened characters who preside there will not leave untouched an iota of evidence that has appeared to them favourable to the prisoner, but will address you in a mild and constitutional charge. Gentlemen, judges are the representatives of his Majesty, and in the discharge of their judicial duties will follow that sacred obligation which his Majesty enters into with the people, when he assumes the reins of executive government. I allude to the coronation oath, by which the father of his people swears and undertakes to administer "justice in mercy," he is the fountain of mercy, and the mandate of his divine attribute should flow through the bosoms of every magistrate acting under his delegated authority.

The Solicitor-General, in a strain of candour which does that learned advocate much honour, urged an observation, that I trust is strongly impressive upon your minds. He told you emphatically, "If there be an hinge left by the witness to turn a doubt upon, you ought to acquit;" and, gentlemen, the bench will lay down the same rule when they come to give their charge. They will tell you that no man ought to be convicted in an Irish court of justice on facts which are not indubitable. Where the witness is weak, there must be a doubt; and where there is a doubt there must be an acquittal. Such, gentlemen, I say, is the merciful rule of the criminal law in this country, that though the conduct of a party accused, even of the most heinous offence, should not appear perfectly innocent, yet he is entitled to a verdict of acquittal; for if there be a doubt on the minds of the jury, this benign rule of clemency becomes imperative, and you will implicitly submit to its authority, for there is an old and wise maxim, better that ninety and nine guilty men should escape punishment than one innocent man suffer. Gentlemen, I shall here conclude, imploring you to take into your consideration, that though you should acquit the prisoner in error, and hereafter make the discovery, as that error will be founded on mercy, mercy originating with God, and constituting the benign prerogative of the crown, the discovery will neither disturb your sleep, nor injure your waking moments, you will lie down in comfort, you will rise with cheerfulness, you will walk abroad in peace with placid consciences. But, gentlemen, should you convict in error, how would your hearts feel hereafter, how would your minds suffer from such a horrid discovery? Would not appalling fear shake every nerve, would not bitter remorse and repentance be the consequence when you heard the voice of an innocent victim in the language of the Scripture, shrieking from the grave, "Oh earth cover not thou my blood?"

Gentlemen, one observation more. As to what has fallen from the counsel for the crown. It has been asked, and the question conveys a strong conclusion should it go unanswered—it is asked who so likely to give information of treasons as a traitor? I answer with another question—who so likely to swell minor offences into crimes of the first magnitude as the traitor, who, with reward in view, insinuates

himself into the confidence of others, for the purpose of making the betraying of their secrets, or the invention of chimerical conspiracies, the means of ensuring that reward? Gentlemen, such a wretch is Lawler

Mr. SAURIN followed, on part of the crown.*

Lord CLONMEL.—Gentlemen of the jury, Patrick Hart, the prisoner at the bar, stands charged with high treason on two distinct species of treason, ascertained by the statute 25 Edward III. This is a statute which has not been passed in the heat of tumultuous time, or the ardour of irritated contention. It is a part of the constitution, which, while it defends the prerogatives of the crown, and protects the safety of the royal person, is a shelter to the liberties of the subject, by stating with clearness and with caution what acts shall be considered high treason; not leaving it to tyranny or caprice, to assume to itself, as in other countries, to deliver a distinct opinion on vague and uncertain charges, in order to lay the ground-work of the destruction of individuals, in consequence of the constitution not having been explicitly defined. The first species of treason with which he is charged, is having compassed the King's death on the days and at the places set forth in the indictment. It has been said at the bar, and the law is so, that whoever endeavours to destroy the monarchy by force, makes an attempt to take away the life of the Monarch; and one observation shall not be concealed from you, which is, that adhering to the King's enemies has never been doubted as an explicit manifestation of an intention to take away his life. To support this charge several overt acts stated to have been committed by the prisoner indicative not solely of this treasonable intention, but also ascertaining the means by which it should be carried into execution, are laid in the indictment. The same overt acts are laid to support the second charge in the indictment, and to this second charge I shall particularly direct your attention; you have heard these acts read from the indictment by the clerk, and I shall also take notice of them:—the first is, that during an open and public war, of which common notoriety is sufficient evidence, carried on by the ruling powers of France and the King of these realms, the prisoner at the bar is charged, first, that he as a foul traitor against his Majesty, King George the Third, &c. [Here his lordship stated the several overt acts.] Gentlemen, as part of this evidence adduced in support of this indictment is written and part of it oral, I shall first state the written evidence. [His lordship then read the oath and the catechism.]

These are two of the papers; you will see from your notes whether I state them correctly—these are the papers sworn to be the bond of Defenders in general. I shall offer some observations on these papers, in order to explain the matter as clearly as I can, which is all I desire, and which is all my duty calls on me to do; you are the constitutional judges, and you alone are to decide upon them; though a gentleman at the bar stated he differed from the judges; if the difference related to the situation of his client, I am not surprised at it; but on that situation I shall deliver no opinion—I have heard it said that judges make very bad jurors—to your consideration, I am happy to say, the cause is referred by law, the verdict must be yours and not mine.

* The present Editor has not been able to discover any note of his address.

Gentlemen, the first position for you to consider (for that we are at war with France is obvious,) is whether the society denominated Defenders did exist? Next, whether the prisoner was a member of this society? And whether he was guilty of all or of any of the overt acts laid in the indictment.

I cannot pass these papers without observing upon them, it is for you to consider, whether this engagement is not to submit to a committee, and pay obedience to its commands in contradistinction to the laws of the land. The association was formed so far back as the year 1790. The oath professes to be an oath of allegiance to the King, qualified with the expression "so long as I shall continue under his government;" you are to decide whether the person who swore it, thought himself bound longer, and how far it is explained by the assertion of Weldon, that "if the King's head were to be taken off to-morrow, the obligation of this oath would be at an end." You are to consider whether the "National Convention," means the convention of France. You are to consider what is intended, when the question is asked "with whom are you concerned?" and the answer returned, "the National Convention." The words "to queal all nations and dethrone all Kings," you are to decide whether they manifest the intentions of the association.

Another part of the written evidence is the parchment sworn to have been found in the possession of the prisoner. This parchment contains the following form of oath: "I, A. B., in the presence of God, do swear of my own free will and accord," [his lordship here stated the oath *verbatim*.] You are to determine whether obedience to the laws means the laws of the land, and whether courts-martial are such as are recognized by law? Part of this oath throws a light on some of this mysterious system, and explains, in my mind, the purpose of the signs used by Defenders—for these signs must be understood that the members of this association may be able to discover themselves to each other. You, gentlemen, are to determine what F. and I. mean, and what interpretation reason must deduce from the substance of this parchment.

Having disposed of these parts of the evidence, which support the charge of adhering to the King's enemies, I will take up the first witness who appeared—I will read the evidence, you will not take it explicitly from me, but you will compare it with your own notes, and adopt it merely where it is conformable to them, and consistent with your own recollection. In stating it I shall meet with the assistance of my brothers; and if I am incorrect, I entreat you to set me right.

The first witness is William Lawler, he is a native of Ireland, &c.

[Here his lordship read the testimony of the witness.]

He next saw the prisoner at Stoneybatter with a society of Defenders. Hart introduced a young man in order to swear him a Defender, he explained the principle of the society, and told him the intention of it was to assist the French when they should land. If you believe that the prisoner was at this meeting, that their designs were such as the witness described, and that prisoner swore this young man according to the forms of the society, it supports a substantial count in the indictment, and you must find him guilty. It is proved that Hart pulled a book out of his pocket, that he laid a paper on it, that he

administered the oath, that he shewed the signs and described the meaning of them. What these signs are you have seen, the witness learned the signs before from Weldon, when he swore him a Defender, and these were the same signs which Hart made use of on that occasion. The witness swore—[his lordship proceeded to recapitulate the evidence.]

Gentlemen, you have been desired to look at the prisoner at the bar, and to consider, whether from his youth, he was likely to commit the crime with which he stands charged. I also desire you should look at him, and as to the circumstance of youth, I shall read you a case from one of the most respectable authorities, which elucidates that maxim of our law, that youth shall not be admitted to excuse those acts, the commission of which is attended with a malicious discretion. From Judge Foster's report, a man who has done honour to himself and the profession, I shall read you the case of Yorke, who, at the age of ten years was convicted of murder.

[Here his lordship read the case, with the opinion of the judges, &c.]

The principle I lay down is this, that if you believe that boy was capable of judging of the conduct, which he is proved to have pursued, there is not a single act which is not tarnished with a malicious, a treasonable discretion. He knew he was to support the French Convention, in case they should cause this country to be invaded; he was entrusted with the flagitious importance of admitting Defenders, as a committee-man; he was sufficiently zealous in the cause, to prevail on the members of his society to bind themselves by oath to meet in arms on the night which he appointed. Every act of this kind is not the act of puerile indiscretion, but bespeaks the competency of a sensible mind, equal to the treason with which he is charged. You are to consider also, whether these facts are not strongly in favour of his innocence, if you believe the testimony you have heard to be the consequence of a wicked and malevolent intention to take away his life. If you shall be of this opinion, you must acquit him. It is said, that judges are very bad jurors; you, gentlemen, are the judges in these cases, entrusted and constituted by the laws of the country; I love to see the freedom of the country manifested in the discharge of every trust. It is the duty of the court to be counsel for the prisoner, you are the judges of the fact, and you know (I mention it in consequence of an assertion at the bar,) whether or not the prisoner has had fair play. It is by fair and candid observation, that a client must be defended, and if you should be base enough to suffer your judgment to be swayed by the direction of the court, as jurors I should despise you, as much as I revere the institution.

It is true, that Lawler is an accomplice; if he were not, he never could have discovered what he explained of the principles of a society, bound by oath to secrecy. How can conspiracy be so totally discovered as by the evidence of a conspirator? Yet the stability of his credit remains subject to the observation, that he was himself an associate in the guilt, which was discovered by his information. If the testimony he gave were false and unfounded, it might have been easily overthrown. He states places, houses, names, numbers, societies, days; if the prisoner be innocent, what has prevented his having

recourse to the common defence of an *alibi*? Why did he not shew, that he was absent from any one of these meetings, by proving that he was engaged in any specific business, that he was sick, or in the country, or employed in any other possible manner? What account is given of the prisoner? I am afraid to trust myself with the evidence, but I trust I have explained it in the most moderate, and dispassionate manner. The witness is not a pretended, or a careless accomplice, he has appealed to corroborated facts for every circumstance of his conduct, and assigned his reasons on every point of his informations.

But the case does not rest on the testimony of Lawler. Alderman James, swore he found every circumstance coinciding with the discovery he had made, not only consistent as to the past or the present, but confirmed by what Lawler told him was to happen in future. He found a meeting in the Liberty, the purpose of which was explained. He also meets an association or mob at Crumlin, on the day on which Lawler informed him it was to be assembled. Godfrey, on arresting the prisoner, found a blunderbuss and twenty ball cartridges in his bed-chamber. You, gentlemen, will ask yourselves, what this boy had to do with a blunderbuss and ball cartridges.

A juror asked, whether the uncle or any friend of the prisoner was in court.

LORD CLONMEL.—I do not find that he is, and if he were, the prisoner's counsel would have known whether they should produce him. Where is there any person to give an account of this transaction; or even to prove that the prisoner spent his time at home, and went regularly to bed?

Here Patrick Hart was called, and the SOLICITOR-GENERAL having waived the objection against producing a witness at this stage of the prosecution, he was sworn. He said, he believed the prisoner was his nephew, that he was his apprentice, was a boy of a good and loyal disposition, and he did not think him capable of committing the crime of high treason: the prisoner was never from his house later than eleven o'clock, the witness himself was seldom from home.

The juror observed, he made the inquiry merely from motives of humanity, because he was led to think the prisoner was left friendless and destitute at that hour of the night.

Henry M'Cormick was then sworn: he follows the tin business, he knew the prisoner and his family, he knew him since he was apprenticed, he never heard anything bad of the prisoner until this charge; his character has been remarkably good; if anything material had occurred to its prejudice he should have heard of it; he knew the prisoner these three years, and was well acquainted with his father, who lives in the county Meath.

LORD CLONMEL.—My wish to indulge the humane curiosity of the jury, and the youth of the prisoner have induced me to yield to the production of witnesses at this period of the trial. Had the prisoner been a man I should not have done so, as there is nothing which would establish a more dangerous precedent, than the general admission of evidence to patch up a defence.

There are cases where evidence to character is of importance, when a fact is disputed, and where oath is contradicted by oath, a general good character should often prove decisive. But in this case.

is there a single fact sworn to by Lawler, which has been controverted? It is for you to consider the nature of that system of depravity, which has been proved; if you believe there is no such association, that there have been no oaths, that imputation has been cast where there is no ground for it, you are not like bigots and zealots, to say to yourselves, we are Protestants, and we are the persons who have been marked out for extermination. You should not give way to such impressions, but doing justice between God and your country, you are to judge, whether there was such an association; whether those papers existed; whether with a traitorous intention the prisoner was a member of the society of Defenders. You must decide in your consciences what is the meaning of this test. This parchment was found in the possession of the prisoner; but do not therefore risk the conviction of a boy on a hasty conclusion of a treasonable design; banish all such ideas from your minds; but as rational men, do not get rid of your understandings. If you believe the prisoner guilty of all, or any of the overt-acts laid in the indictment; if you believe that this association existed, and that the prisoner was one of its members, and that he acted the part he is sworn to have acted, you must find him guilty. It is the verdict of your conscience; it is an obedience to your oath. If you believe, that he had this parchment without knowing that it was in his possession, if you believe that it was found upon him, if you can consider it innocent, if you believe that it will not bear the meaning which has been affixed to it, if you believe that from any reasonable consideration Lawler is not entitled to credit, you ought to acquit the prisoner. If this be a case where, after all the observations which have been made on it, you are still in suspense, under such a circumstance you ought to acquit him. The benignity of the law imposes as a duty upon the jury, when the balance is equal between the guilt and innocence of the accused, that they should indulge the sentiments of mercy. If under all the circumstances of this case, your minds remain suspended in doubt, let your verdict be a verdict of acquittal.

Mr. Justice CHAMBERLAIN.—Gentlemen of the jury, on consideration of the evidence which has been laid before you, I must confess, that it is with pain I address you. You have been told, that the prisoner stands charged with two distinct species of high treason. You have been informed, that adhering to the King's enemies amounts to compassing his death. He is not only bound from interest, but he is also bound by oath, to support and maintain the laws and constitution of the country. You know, as men possessed of common understanding, that adhering to the King's enemies manifests an attempt to dethrone the King, and by construction amounts to an intention to take away his life. I shall therefore confine myself to the charge of adhering to the King's enemies. I shall not attempt to define this species of treason; but I do not know any act more explicit, than that laid in the indictment. It is impossible to conceive a plainer illustration of it, and instead of defining the offence, I shall point out the facts, as the best substitute for a definition. I hope I do not differ from the gentlemen concerned for the prisoner when I state, that adhering to the King's enemies is treason, though the intent should prove abortive. Thus an intercepted letter is evidence

of a treasonable purpose, as was determined by the court of King's Bench, in the case of Jackson, whose treasonable designs were not accomplished. If nothing could be considered treason, which did not succeed, no man could be brought to punishment until the government of this country be subverted, and it would be then too late to call him to an account for offences committed against a system which was annihilated by his exertions. In this case, taking the evidence to be true, it amounts to plain, obvious, explicit treason, as ever entered into the head of man. The charge is adhering to the King's enemies; I think the whole of the evidence comes to this, that the prisoner associated with Defenders for the purpose of dethroning the King, and affording assistance to the powers of France. Did not the prisoner become a Defender for the purpose charged in the indictment? The first point you ought to consider is, what are the motives of this association? You have heard two papers read in evidence on the tendency of which you are to decide. Lawler swears, that they were the instruments exhibited, when he was sworn a Defender by Weldon. You may observe, that one of them is a general precedent; it binds the person, who swears to observe it, to be obedient to all committees, in all lawful matters; part of it professes to be an oath of allegiance to the crown, and as it has been observed at the bar, that every subject is bound in allegiance by the ties of natural justice, this oath, far from ascertaining that the allegiance of the subject to the King should continue as long as they both shall live, abridges the duration of it, by the words "so long as I shall live under his government." If there be anything ambiguous in it, you will find the explanation in the catechism, the question is, "what are your designs?" the answer, "to quell all nations and dethrone all Kings." It would be a farce to say, and it has not been attempted to be denied, that a profession of this kind is an act of adhering to the King's enemies and assisting the powers of France. It is true the prisoner was not present when Lawler was sworn, but it has appeared, that he gave him the signal similar to that which the witness has been taught by Weldon, when he was made a Defender. This is some evidence to shew you that Hart was privy to the designs of this association, and it is a reasonable conclusion, that every man entering into a society is acquainted with its principles. It is plain from the parchment, that the Defenders were associated with the powers of France. See what it is, "And I of my own free will and consent, do swear to be true to the present united states of F. and I." From the context it is impossible that this should mean anything else than France and Ireland. Gentlemen, in whose minds are France and Ireland united? You know they are at actual war; you must see they were united only in the breasts of traitors; no man, without the consent of the crown can unite them, and if this be the test of Defenders, they must all be traitors.

Gentlemen, at a period when the country is involved in a most distressing war, for what purpose can those men unite to take away arms from those who would defend the kingdom, in case of an invasion, except for the design of murder or of treason? It is wasting time to prove the conduct of the prisoner to be treasonable, and if Defenders collected arms with the intent of contriving to wage war

against the King, it is impossible that any rational man should hesitate to say that they must be traitors.

The question for your consideration is, whether the prisoner was a Defender, and whether he became such for the purpose of adhering to the King's enemies. This depends in a great measure on the evidence of Lawler, and you must be positive that the prisoner was aware of this intention—Lawler is not positive that Hart was at the meeting in Plunket-street—he was at Stoneybatter, where he brought a young man and swore him a Defender, declaring, when he administered the oath, that the principle of the association was to assist the French when they should land. At this meeting it was, that he bound the members by oath to assemble in arms on the succeeding night. In fact, he appears perfectly possessed of their secrets, and acquainted with their proceedings. The second meeting was in the Liberty, where he had a young man whom he told the witness was a Defender: on this night he gave powder to the witness, and desired him to make it into ball cartridges. At Drury-lane he spoke of the Defenders intending to rise, in order to massacre the Protestants, so that, if you believe the evidence, he was not only conscious of the scheme, but entered sincerely into the project. This will also be material in obviating the objection of youth; it bespeaks a craft and treachery beyond his years, and proves him to be capable of a treasonable discretion. If you believe Lawler, the prisoner was a Defender, and conscious of their designs. But the case does not rest here; he told Godfrey he was sworn a Defender by force, and had the parchment put into his possession against his consent. If a man be waylaid and trepanned, God forbid his conduct should be criminal; but if you believe the evidence, you will find it as certain, that he was a party to the cause, and acquainted with the design.

If he had proved by evidence that he was sworn by force, it would be conclusive of his innocence; but the conduct of a man sworn by force would be, that he would immediately disclose the circumstance to a magistrate. Perhaps it may be imagined that from the youth of the prisoner, such an idea would not arise in his mind; but would he not at least, have complained to his uncle of the outrage which was offered him, and been able to give evidence of the circumstance on this trial. I recollect that his uncle was produced, and no question of the kind was asked him. You are to judge whether the blunderbuss found in the bed-chamber of the prisoner, was in his possession, and if you think so, the circumstance looks suspicious. These are the most material considerations for you to attend to in this part of the case, namely, whether the prisoner was sworn by force; and you will also observe how far his conduct is consistent with this idea. If you believe he was voluntarily sworn a Defender, and that this parchment was entrusted to his care, it is persuasive evidence of the truth of Lawler's testimony, and the case will not rest on the oath of an uncorroborated approver. I admit it may be perilous to convict on the unconfirmed testimony of an approver, but Lawler is not a witness of that description; it is true he was an accomplice, who made a voluntary discovery; and the history of all conspiracies informs us, that conspiracy cannot in general be detected, except by the information of a conspirator; nor is there anything unnatural in the

position, that those who betray the state, will be ever ready to betray each other. Whenever, therefore, the evidence of an accomplice is confirmed by circumstances, its sufficiency is incontrovertible. Under the law of England, which requires two witnesses in cases of high treason (whether the law of Ireland differs in this respect from the law of England, is a question on which I shall deliver no opinion), the evidence of two accomplices is sufficient to convict; and, in my judgment, the evidence of one accomplice, corroborated by circumstances, affords a more rational ground for conviction. If you think the prisoner so extremely young, that he was ignorant of the nature of his conduct, you ought to acquit him, and if you shall do so on this principle, I think you would do well to mention it. If you think that his having been forced to become a Defender is a falsehood, the defence itself is evidence of craft, and you ought to find him guilty. If any doubt remains in your mind, it is your duty to acquit him.

Mr. Baron GEORGE.—Gentlemen of the jury, I shall trouble you with very few observations. I shall only remark on the charge against the prisoner, of adhering to the King's enemies. If you believe he became a Defender with an intent of assisting the King's enemies, and dethroning the King, or for either of these purposes, you ought to find him guilty. As to the species of treason he is sworn to have committed, I shall observe that the Defenders were associated for treasonable purposes, and that the prisoner became a member of their society with full knowledge of their designs; that these designs were treasonable, you will find from the papers which were read in evidence; from one of them you will discover, that the Defenders were associated with the French Convention to dethrone all kings; you will find the origin of this society so far back as January, 1790. It appears they had committees and officers whom they were sworn to obey. From the parchment you will find them bound by oath to be true to France and Ireland; you will find them bound not to associate with robbers, and still more, not to give evidence in a court of justice against a member of their own society. If they were not associated for robbery, where is the necessity for secrecy? If it be plain they were not associated in order to commit robbery, you then will ask yourselves whether they were not united by treason? All the legal powers of France and Ireland are at war, and the two countries are united only in the breasts of traitors. If you are satisfied that the society of Defenders is a treasonable association, you are next to consider whether the prisoner was one of that association. The testimony of Lawler and Godfrey, corroborated by written evidence, has been laid before you. There is no doubt that the evidence of an accomplice ought to be received with caution; but whenever a jury is satisfied with the truth of it, it is sufficient to convict; but it ought to be received with circumspection, as it is often admitted from necessity; because if no such evidence could be adduced, the greatest crimes might be committed with impunity, and no nation could be secure from treason, which shuns the light and is fostered in obscurity. Some reflections have been cast on the moral character of Lawler; surely no man who obeys the dictates of religion can be a traitor, and calling this man infamous is stating no more than what he himself has admitted. Still there is something particular with respect to the

testimony of this witness, which adds a degree of credibility not annexed to the testimony of an accomplice. The counsel for the prisoner have been instructed in every circumstance of what he has proved, because the evidence of this man, given on a former trial, almost similar to the present, has been published, and yet no man can be found to controvert what he has sworn. His testimony was disclosed months before the prisoner was put on his trial, and yet it remains uncontradicted. Consider whether it is within the compass of ingenuity to fabricate such a system, and to support it with consistency! This should be a circumstance for your consideration, if his evidence stood alone on its own credibility, uncorroborated by circumstances, but it is confirmed by subsequent facts corresponding with his information. When Godfrey went to arrest the prisoner, he received directions to search him, and in his pocket he found the parchment which has been read. You will consider whether he became possessed of it in consequence of the accident which he stated; you must consider how far it is probable, that a man never from home at a later hour than eleven o'clock, should be seized by force and sworn in the manner he described, and have this muniment of treason entrusted to his discretion. An honest man might be involuntarily sworn, but the obligation of such an oath is nugatory and vain, and it would be not only the duty, but the inclination of any honest man to withdraw himself from such an association, and to manifest by his future conduct, an abhorrence of its principles. It appears suspicious, that in the bedchamber of the prisoner were found implements with which that oath was to be carried into execution. This circumstance gives an additional weight and probability to the evidence, which it would not otherwise possess. You are to receive the testimony of Lawler with caution, but you are not at liberty to reject it. You are bound by every duty, human and divine, to investigate the truth. You are to consider the truth and the justice of the case. Other considerations are in other hands. You have a sacred trust to discharge to the public. If no doubt remains in your minds, you must find the prisoner guilty; if you have any, you ought to acquit him.

The Jury retired at half-past one o'clock on Thursday morning, and, in about ten minutes, returned with a verdict, finding the prisoner—**GUILTY.**

FRIDAY, February 26th.

Edward Brady was put to the bar for the purpose of being tried upon the indictment for high treason found against him (*Vid. ante*, p. 348.)—After the pannel was called over, it was intimated to the Attorney-General that the prisoner was disposed to acknowledge his offence, and throw himself upon the mercy of the crown.

Mr. ATTORNEY-GENERAL.—My lords, I understand that the prisoner looks to the crown for mercy. Sure I am that nothing can fill the royal breast with more true delight than to extend mercy where anything like repentance appears; and the officers who prosecute for the crown will feel much pleasure in assisting its benignity under such circumstances. The prisoner had early manifested a disposition to repentance; but now and again his wavering mind fell back, and did not adopt any settled determination. My lords, I shall not pro-

ceed upon this trial, and therefore move your lordships that the prisoner be remanded.

The prisoner was accordingly remanded, and directions were given the sheriff, that he might be without irons, if he could be safely kept.

Upon a subsequent day the prisoner was brought up and his counsel moved, that his trial be postponed until the next commission.

MR. ATTORNEY-GENERAL.—My lords, I consent to this motion, and that the object of it may not be misunderstood, I mean to have a pardon made out for the prisoner, so that he may plead it at the next commission.

SATURDAY, February 27th.

The grand juries of the city and county of Dublin were called over.

Thomas Kennedy and Patrick Hart were put to the bar. Their indictments were read and they were severally asked, why judgments of death and execution should not be awarded against them according to law?

Thomas Kennedy.—I hope from the recommendation of the jury that you will have compassion upon me, and I hope for a long day. A man who was not recommended had twelve weeks.

Patrick Hart.—You have been so merciful to Brady, who is charged with the same offence, that I hope for mercy.

Lord CLONMEL.—You, Thomas Kennedy, and you, Patrick Hart, and each of you stand convicted upon indictments for high treason under the statute 25 Ed. III. in compassing and imagining the death of our most gracious Sovereign Lord the King; and also adhering to the King's enemies. A plain overt act of the intention of levying war, or bringing war upon the kingdom, or of inducing the enemies to invade it, is settled to be an overt act of compassing the King's death. Acts such as I shall mention, which appeared from the evidence to have been committed by you, never have been doubted to be overt acts of treason;—nor is it necessary, that you should have carried your schemes into execution, because that would have defeated the justice, by which you have been brought to trial. You have each been found guilty by separate juries of the most respectable citizens in this metropolis. You have, each of you, taken all the advantage, that the peculiar beneficence of our law has granted to persons in your situation, and you have challenged such persons, as either from secret knowledge, or personal dislike, or any other motives, you objected to. You have had counsel assigned to you of your own choosing, and you have had a long time to prepare for your defence. You have had the assistance of your counsel in the amplest way. You have been prosecuted as your own counsel have admitted, with moderation; with moderation, decency, and temper. You have been tried I hope, with calmness; with patience; with humanity; and justice by the court; with every advantage to each of you, which the law and constitution of the country allow, and every indulgence which the court could extend, or which you desired, during the course of a long examination, which was observed upon with the utmost latitude by counsel.

The evidence upon which you have been found guilty left not the least doubt in the breasts of either of these juries. If there had been a doubt in either, they were expressly charged, in case of such doubt, to acquit; and the recommendation they gave shews the humane temper of their minds;—for they have annexed their reason that it was not on account of any doubt of the guilt, but of your youth.

You have been found guilty, each of you, of uniting yourselves with a treasonable association in this country; the objects of which are avowed, open, and plain, to persons of the most inferior understanding; of one infinitely less than you have disclosed in the few words you have uttered. Upon each of you was found written evidence, which cannot be doubted; written evidence that proves your guilt, and speaks for itself. It professes to be a voluntary oath taken to support; not the law of the land—but the National Convention of France, for so the jury have found it. The object of it was to destroy, not only his Majesty, but all kings; to be true only to their own association. These two papers, the oath and the catechism, carry upon the face of them intrinsic evidence of your guilt, and shew clearly what your object was, that it was to support a French invasion, if the French should invade this country. It was proved to the clearest conviction of the court, not one of whom ever mentioned an opinion before while it was possible it might do you harm with the jury, that you were first members of the Telegraphic Society; you then passed under another denomination, grounded on the affectation of philosophy, the Philanthropic Society. Then you became Defenders, and you disclosed their object. It is manifest, that you knew by what ceremonies they were instituted; you knew they must continue, if at all, by robbery; by house-breaking; by plunder; by treachery; by murder and by treason. All these wicked, and flagitious offences are comprehended under the name Defender, as is manifested by what is proved upon you. Your system was to go out with such arms as you could get, or had got by robbery, or other means, to plunder houses in the dead of the night and during the innocent sleep of the inhabitants. You bound people by oaths to bring their arms, for the purpose of procuring more. It has been proved, that you made subscriptions to buy gunpowder for the same purpose, and when you had collected arms in this manner, it was proved, that you intended to assist the French, now at open war; that you intended to assist them in the invasion of this country, when they should attack it; and it was proved upon you, that the purpose of the association, wicked, and flagitious, and rebellious as it is, formed in the very bowels of this country, was to have made a general rising; to have massacred the Protestants of this country; to have taken the corn and provisions; to have taken the forts; plundered the banks; seized the arsenal; and made an attack upon every fortress in the kingdom! To assist the French in the invasion of this your native country, and you were to become the masters of the island. It was proved upon you in the clearest way and in the most consistent, I ever heard. You were assembled, not accidentally, in this place, or the other. It was proved, that you were in Cork-street; that you were at the assembly in Drury-lane; that you were at Stoneybatter; that you were in Barrack-street; at

Plunket-street; at Crumlin. In all these several places described with accuracy, and pointed out with such clearness, that there was scarce a tittle stated by Lawler, that might not be contradicted, if not founded in fact, and that is not fortified by such circumstances, as scepticism cannot disbelieve, nor rational men deny their assent. Twenty-three are stated to have been at one meeting; more at another. It was sworn, that one of you declared there were 4000 Defenders in Dublin, and the use was to have been made of them justifies the assertion. If you could collect them, the system was artful, and practicable, and too likely to succeed. Numbers of your age were selected, I take for granted, and even that appeared, by persons elder than yourself; you were made committee-men to give you a consequence in your own minds; you were empowered to swear new Defenders, to give you a degree of active importance. You, and each of you were active persons in that part which was most fitted for you; you could read, and write, and you were under the conduct of Burke, a man notoriously of infamous character, who had circulated his doctrines to his own disgrace, but not yet destruction, publishing with his name atheistical treatises to justify his conduct. And this was the artful expedient made use of, by instructing you not to believe the power of the Almighty, or the doctrine of rewards and punishments, to make you as wicked as human creatures are capable of being, and then alleging, that you are not to be believed, if one of the party should give information against the others. The system was conformable to the French philosophy; "I will debauch their principles and their minds, and if any man be weak enough, or in the general sense of mankind honest enough, to betray us, we will shew he is not to be believed upon his oath, having denied the existence of a God, which we had taught him to do," and thus you would protect one piece of wickedness by another.

Again, see another dangerous part of the system. They resorted to the youngest persons they could find, active and fit for their purpose. "We will put them," said the advisers, "into the departments that will gratify their young pride, and the unthinking youth shall be made committee-men; they shall consider themselves officers, and if they be detected, their tender years will melt the hearts of the jury, who will sacrifice justice to the known humanity of the country."

Here, then, was the second part of the artful and wicked wisdom by which this system of treachery was carried on. Burke was to be one of ten; it was proved that each of the ten was to levy ten, and each of the last ten was to levy five more, thus to make a body of six hundred: each man was in some degree, in point of justice and good faith, responsible for the persons levied by himself. It was sworn to the satisfaction of the court and jury, that the design was, that by dressing these men, to the amount of one hundred, in scarlet uniforms, to persuade the citizens into a belief that the army was with the insurgents, and by this imposition and craft to plunder the bank, and secure the arsenal. Was that absurd? No such thing. What did you want to effect it? Nothing but ammunition and arms. It was sworn that you tried other means, that of robbing the houses of individuals; and, as the strongest proof against you, upon you, Kennedy, were found the oath and the catechism; and upon you, Hart, when

surprised early in the morning, was found a parchment writing, beginning, "I, A. B., do swear to be true to France and Ireland," for so the jury have interpreted it, and then it proceeds in the same traitorous language as those found in the possession of you, Kennedy. A blunderbuss and twenty ball cartridges were also found.

But it is said, why, this is impossible, to make a rebellion of boys. See what the answer plainly is. It is admitted that there has been a conspiracy; that it has consisted of great numbers, and yet, hitherto, few or none have been secured, through the influence of these illegal and detestable oaths, administered by boys. Does it not, then, bring this unhappy reflection painful to every mind, that it is a conspiracy from which we cannot preserve the youth of the kingdom. It has gone so far as to corrupt our apprentices; and it is not poverty, distress, or oppression, which has given rise to it. There is not a man sworn against as forming this conspiracy who does not appear to have had a trade and means of living—a trade and means of living, depending upon the elegancies of elevated life, and not by the necessities of society. One appeared to be a carver, another a gilder, another a glass-cutter, &c. There have been others of more adult years, connected with societies, not a great way removed from guilt in their breasts and minds, though not indicted for what you have been tried, and found guilty. This is not a subject taken up on a sudden: you have had the same able and legal assistance, as to one of your counsel, whom you named four months ago. There was not a word of Lawler's evidence which was not known for some months; it has even become the subject of publication. Yet not one word of it has been contradicted to this hour by any man, by friend or parent. It appears you are not abandoned children, or forlorn, without some persons to look after you. Your guilt has not depended upon the mere assertion of one man. On the contrary, his evidence stands supported by circumstances and facts, that cannot mislead any mind in the progress of truth. It appears that Lawler said, "go take Kennedy; you will find the Defender's oath and catechism in his pocket." He had seen it frequently before, and thought it probable it might be found where he saw it deposited; and there is no attempt to show any sort of compulsion or contrivance, by which those papers were put in by Lawler, or any person for him. When you, Kennedy, were arrested, these papers were found upon you; so that not only what Lawler said, as to the past tense but also the present, is fortified by different facts. And when you, Hart, were arrested, this parchment was found in your possession; not, indeed, from any information given by Lawler—it does not appear that he knew of it—but it is evidence to establish one of the facts charged against you as a Defender, which the jury have found you to be.

I shall speak a word of your age. From the necessity of supporting human society, and of preventing flagitious crimes from being unpunished, when perpetrated by youth, courts have resorted to printed cases, where judges have determined that younger persons than you, perpetrating crimes, ought to be punished. In the case of murder, a person of the age of ten years was sentenced to capital punishment, and the reasoning of that case will go down to the lowest age, where a malicious mischievous intention appears. And,

in truth, it would be absurd if it were otherwise. It would be to say, that certain classes of people in society are able to commit the worst offences, and yet the law cannot reach them. By your industry and activity, if the evidence be true, as the jury have sworn they thought it, and we have no reason to doubt it, it is now to be taken for granted, that you thoroughly understood every part of the wicked treason you were embarked in. I mention this to show, that there is no part of society that is not the object of legal punishment, even to the forfeiture of life.

This being a short view of the facts, recapitulated in the manner usually stated by persons in my situation, I must now put you in mind of the horrid offence and wickedness of which you have been guilty. I suppose there is no rational creature that has heard what I have stated, who will not go away convinced that the evidence is plain, clear, and coercive. There has not been a single fact contradicted, or explained in your favour, and that the matter of these papers found in your possession is most flagitious and detestable, cannot be denied.

The salvation of this kingdom has, under the providence of God, been secured by the information given by one of yourselves, by which your bloody and treasonable designs have been defeated and prevented. For if you had succeeded in your abominable projects against this kingdom, instead of its having been, in the time of a ruinous and calamitous war to every other part of the earth, the most fortunate spot on the globe until 1790, it would have been the miserable scene of carnage, like France, the place from whence you expected friends and assistance.

The punishment of our benign law not being for vengeance, but to deter others by example, has led me to expatiate upon the evidence and the nature of your crime, your situation and circumstances, and the danger to which the kingdom was exposed, if the design had not been providentially revealed by the information of the prosecutor, more at large than, perhaps, I would have in another case. But it is right, that in the publication of this trial, the eye of the public should be open to a full view of their own situation. Persons who have been involved in these conspiracies should guard themselves against the mischiefs of high treason, by being publicly apprised of the punishment attending upon it.

You have, in another instance, wounded the peace of society extremely. You have, in the progress of your wretched and treasonable pursuits, thrown a cloud of suspicion over your connexions and your associates, which can never be dispelled but by their most explicit good conduct; for if any person formed the most distant conjecture of your views, every such person has been guilty of a gross misprision by not disclosing them, so that they might be best guarded against, defeated, or prevented.

It is a painful part of my duty which yet remains, and that is, to pronounce the dreadful judgment of the law upon you, which has been considered by the court.

[His Lordship then passed sentence upon the prisoners, in the manner usual in such cases, after which, the prisoners were remanded.]

After the prisoners were removed, his Lordship addressed the grand juries.

Lord CLONMEL.—Gentlemen of both grand juries, in addressing you, I mean only to give you that preference which the law has given you, by thinking you the first auditors of what has passed. What I said, and mean to say, if I did not think the occasion called upon me to speak to you, and through you to the people now assembled, I might well be excused from this trouble. It is a painful task. I hope in God it may be attended with the consequence I expect. I thought it might involve considerations of too great extent, to comprehend it in the lessons I was obliged to give the prisoners. I, therefore, restrained myself, meaning to address you. Many are here collected of different ages and various degrees; some entrusted with the highest places which the constitution knows. I thought if anything could be done, by calling them to a sense of their situation, this would be the most useful hour of my life. This subject, of which you have heard so much, is a prosecution, conducted by the servants of the state, in the manner which you have observed, and involved in the length of time you have perceived. My objects are two-fold. First, to shew what I think (and it is a satisfaction to find that my ideas correspond with those of my brethren) of the probability of the charge made by Lawler; and next, if I can, to exhort you to a manly exercise of your duty as magistrates and subjects.

Gentlemen, as far back as the year 1790, and several years preceding, I suppose there was not a country upon earth, that felt itself in so fortunate a progress of prosperity and advancement as Ireland. At that period commenced, and it is so stated by written evidence, the institution of Defenders, though, perhaps, under another name, for the oath states their institution in 1790, with improvements since. The country has been since involved in three of those calamities, that each of you, who do your duty to God, pray to be delivered from, namely, from "sedition, privy conspiracy, and rebellion." I am speaking of facts and notoriety. It began with sedition, and the simple and inspired line which I have quoted, with a knowledge of the human heart, makes the other two follow, viz., privy conspiracy and rebellion. It is from these I hope God will deliver you. At that time, a fugitive traitor, Hamilton Rowan, who had for sedition been imprisoned, and was connected with that self-executed traitor, Jackson, and some other fugitive felons, whose names it is not necessary to mention had begun to vitiate and debase the minds of the country, and from that time to this it has never rested—French names and proceedings were adopted—treason was the object—murder the means. In 1791, William Lawler, who has since appeared as a prosecutor, having learned a trade, by which he appears to have got a reasonable and comfortable subsistence, left this country and went to England, where his father had been; he enlisted as a soldier, and having deserted from that situation, changed his name. I will shew you, that love of life, the dearest object of human creatures, has been the original director of this man's conduct; that he discovered his crimes to save his life, and not before he thought his life was in danger, and that not from the law, but his own associates.

He went to London, and there under the name of Wright, he got

into one of their treasonable corresponding societies. I speak from his own description of it. I am not a judge of that country, nor am I to try any of them. But his description was, that they were to force a reform by arms brought to the throne. He was asked, if he had room to conceal one hundred arms, for that it was as necessary for them to learn the use of arms as well as the society of Sheffield, who had it in contemplation to force a radical reform.

Now take up the first part. Is it improbable, that men in the army should be resorted to? The thing speaks itself. Is it improbable, that a man, who deserted, should change his name to prevent his being detected? The thing speaks itself. While in London, he is directed to a man of notorious name, Daniel Isaac Eaton, who recommends him to Rowan, at that time not thrown into gaol. Lawler got a letter under the name of Wright to Rowan, to whom he told his real name, and the very masque was a sort of recommendation to such a man as Rowan. I speak without reserve of a man, who has quitted the kingdom, and stands outlawed and attainted of treason. Was it likely he should object on account of the fiction of name? He makes Lawler a present; of what? Of a print of Thomas Paine, the saint of rebellion, anarchy and murder! Proud of his present, he follows Rowan into the gaol of Newgate:—there Rowan discourses with him upon the propriety of having corresponding societies here, similar to that in London. Is there a tittle of that improbable?—or at which the mind revolts? That a person, coming into this country should endeavour to circulate those opinions and principles he adopted there. “Get six staunch men,” says Rowan, “whom you can depend upon. I would rather have them than six hundred others; see what has happened to me; I have been discovered by those who were not staunch.”* If this was idle talk, founded in imagination and wicked lies, it might be contradicted by those who then attended Newgate. Lawler next becomes a member of a society, called the Telegraphic, which opens, by degrees, more largely into the Philanthropic. These were headed by whom? By Burke; a man, notoriously of infamous character, expelled from the university for abominable blasphemy and impiety. Where is Burke? Why not contradict what Lawler said? No person pretends to say, he is not in existence. But it may be said, he is afraid. Why is he afraid?—he ought not to be afraid, if he be an honest man. If he be an honest man, why not contradict this account? But it does not depend upon Burke alone. Lawler states a number of persons by name. He was himself a zealous Defender; his religion Protestant, and he frequently attended the Methodists. He was apparently an enthusiast to his purposes; going as far as the Defenders did; and for what? In order to establish a Republic. He was employed to levy forces; he did levy them. He levied his ten men. Was this improbable? He had been a soldier; he enlisted his ten men, according to his promise to Burke. Is there anything in that at which the mind revolts?

* Any one who has read the report of A. H. Rowan's trial must see that this was entirely false. He was convicted on the evidence of Lister who could not be said not to be “staunch,” for he never was an United Irishman or Volunteer, nor was he ever involved in the designs of Rowan. He was a man of bad character in most particulars, but he did not add treachery to the number, as he never participated in the secrets or objects of Rowan's party.

What is next to be done? they collect together, not in one place only, or secretly, but in several. He attends; he describes the places most accurately. Twenty-three met in one place; he mentions most of their names, Cook, Dry, Coffey, Gallan, Atkinson, &c. These were my associates. Were they? They are fugitives in guilt, and conscious traitors; why do not some of them come, and contradict what this man has sworn? What is next done? After he stated who were at Dry's, he mentioned several other places, and particularly Plunket-street where Defenders met, and where subscriptions were made for buying gunpowder; the waiter was a Defender, and therefore took care, not to let strangers in. Is there any man to contradict this? Honest men need not be afraid to allege the contrary, if the facts were not so—any of the family could prove it, if it were false. The prisoner might say (if the fact were so), "I was in bed, and will shew it; we were not at Dry's, or we were only three in number." The witness mentioned several house-keepers; is it not a challenge to the whole city of Dublin to give evidence against these assertions? "Let me see, if there be any man to contradict me." What does he say next?—he uses language that must bring certainty to every mind; "I liked the prisoner as a Defender." There is no evidence to shew he had any quarrel with these people. He was himself a faithful Defender, as they thought. One of them told him, if he was asked what religion he was of, not to say he was a Protestant; accordingly he said he was a Roman Catholic. Upon that confidence, Hart calls him into a window, when they were assembled at Drury-lane, and says, "you know that Coffey, the chairman, what religion is he?" "Why do you ask me," said Lawler?—"because," replied the other, "if I thought he was a Protestant, I would not keep him company, and I tell you, that the intention was to make a general rising on such a night, but we considered, that if we did it, before the harvest was got in, we might be starved, but as soon as that is done, we will make the attack." Then indeed, it behoved Lawler, who had changed his name to save his life, to take care of himself—"they will find out that I am a Protestant, and it is necessary I should save my life." Is there anything improbable in that? Let me be understood to say, that they were to be destroyed by Defenders and ruffians, traitors, and rebels. Does this cast reflections upon the good subjects of the kingdom? No such thing; God forbid! I wish to make every man zealous, bound in point of honour as well as conscience to support the cause of justice and of his country against ruffians, against plunder, violence, murder, and treason; and if you adopt the means which I shall suggest, I will shew, that in a month, if you do your duty, there will be an end of Defenders and of treason. It is a bold promise. It is a promise founded in my conviction of the integrity and spirit of Irishmen and all classes of them. Let me proceed, however, with the conduct of these men. With respect to Kennedy, the Defender's creed is found in his pocket; it was found where the witness had previously said it was. Why, to talk of his not deserving credit after that, would be to suppose men were made up of idiocy, and phrenzy. If you find your watch in a man's pocket, would you disbelieve the man who had previously told you it was there. To doubt then the evidence as to Kennedy would be to make you the most

stupid animals without sense, or motion. Then what is found upon Hart?—not indeed what Lawler knew to be there; but there is found in Hart's pocket, at his uncle's house, in a room up stairs, this notable Magna Charta of Defenderism and treason, in more strong expressions than either the oath or catechism. It speaks as treasonably, as rebellion, or treason could make it. France and Ireland are called United States! It was well observed by one of my brothers upon the trial, "how united but in treason?" You may as well unite fire and water. The two nations are at war, and can only be united in a bond of wickedness and blasphemy, rebellion and treason. So that finding this paper upon Hart would alone shew, that every word said respecting him was true. But does it rest there? No: for in the chamber of these infants, as they are called, dressed out so for the occasion, there are found a blunderbuss and twenty ball cartridges! Then it is said, will you pass sentence on infants? I have known juries long; I have never known above three instances where they were mistaken. How are these juries taken?—from the body of the city. Was it a parcel of grandees?—no such thing. Each of these boys, by industry and diligence might in the course of a few years, be as great and as grand as any of those who tried him. What then was found? A blunderbuss and twenty ball cartridges! Is this the innocent skinner's apprentice, with a blunderbuss and twenty ball cartridges in his box! Gentlemen, parents do not do their duty. Magistrates do their duty ill. Masters still worse. Neither their duty to God, their consciences, or the public. Did they but see where their apprentices and those employed about them consumed their time, and what company poor lads, taken from their parents, and left with those who should teach them religion as well as trade, frequented, the mischief might be prevented. Can it be imagined, that if masters did their duty, such a system as now prevails could continue for a week? No. But what do the masters come here to say?—not to contradict the witness, but to say, they do not believe him. One man was a member of a reading society, a master tailor, thirty six years of age, and a father of a family, reading Pope's works and a dictionary of sciences! "I attended a reading society; it became the Philanthropic Society, and Paine's Age of Reason was the object of our studies." Is this the way in which the honest and well deserving tradesmen and artificers of the city of Dublin should be employed? If masters were employed as they ought, would apprentices be employed as they ought not? Another witness produced on behalf of the prisoner was a man of the name of Robinson, and, very unfortunately, I find an indictment against him. I do not presume him guilty;—but he is indicted; for what? For publishing caricatures; an odious mode of obtaining a livelihood. Who is the next witness produced? The landlord, who found him honest, industrious, and diligent, but said he did not deserve credit, because he used to work upon Sunday, and did not go to church. Who is the next person brought to impeach Lawler? Gallan, who became a grocer from a hair-dresser, and who Lawler proves had given him a pistol, knowing what use was to be made of it. The pistol was brought into court. My God, then is it necessary to go into a deep and laboured refinement to satisfy you that everything which has been said hitherto is deserving of credit?

It is said, and it was argued upon ingeniously, that a man having no sense of religion, who thought of putting the King to death, who deserted, who was charged with petty thefts, and was faithless to his own people—are you to believe him? The answer is plain—you find that the man entered into a wicked association, and when it came to touch his own life, he quits it. Under what circumstances? Not as an approver. He was not sworn against. Not a man of the whole gang was sworn against. He came and gave information to him in whom he thought he could confide. He then goes to Alderman James, tells him of the situation of affairs. An assembly was to be had; and their object was communicated. The magistrate meets three thousand people. In answer to a question, put by the prisoner's counsel, he says, he believes their object was to attack the bank, plunder it, and take the arsenal of the castle. Is that a reason why Lawler is to be disbelieved because he is confirmed by a magistrate of the city of Dublin as to part of the information he has given?

Again as to Crumlin; a meeting of Defenders is held there—that will be the time, says Lawler, to rescue me—and that is the time he first openly abandons the association. If he were a liar, is there anything more certain than that he could not muster three thousand people? What then prevents you from yielding to every rule of probability, confirmed by testimony that cannot err? For so it is with respect to what has been deposed by Carleton and Godfrey; all confirming every tittle and every circumstance passing from this man's lips.

See it in another light. It is said he concealed part of what he should have discovered, namely, the abominable design against the Chancellor. He did so; but it appears there was such a design. To be sure, a man who was not shocked at the idea of destroying the King, would not be shocked at the scheme of destroying the Chancellor; but he was shocked at his own danger. And is this improbable, that they designed mischief against that great magistrate, whom they afterwards attacked, and were near destroying in the open street? * Therefore, you see that probability follows this witness as a shadow does the substance, fully establishing the truth of his narration.

Now as to another part of the case. One of these Defenders was tried three months ago. The evidence was very nearly in terms the same, with regard to the Defenders, as has appeared against these two boys. Three judges attended upon that occasion;—men, whose characters, if some of them were not present, I would minutely describe; men of temper, of high reputation even before they got upon the bench; they try and approve of a verdict against Weldon. One jury acquitted Leary. Why? Because the only time he went among them he was drunk. In such a state, any man might have

* The Chancellor in his carriage was assailed; he received the blow of a stone which with somewhat more force would have rid the people of their enemy. His house was attacked; the populace were determined to destroy him, and were proceeding to execute their intentions. At that moment their rage was most fortunately diverted by the address of his sister, Mrs. Jeffries, who, unknown, and at great risk, had mingled in the crowd; she misled them as to the place of his concealment. Disappointed of their object, they then attacked the Custom-house, where Mr. Beresford first commissioner of the revenue resided. Dreadful results were, with reason, apprehended.—See Barrington's History of the Rise and Fall of the Irish Nation, p. 425 (Duffy's Edition).

done the same. But then a clamour is made through the country, "are the lives of subjects to be taken away upon the oaths of Atheists? A fly's wing ought not to be hurt by his testimony." See what was done: The judges postponed the execution of the man, to let in time as much as possible to see whether subsequent events would produce any different evidence. Time is given, assistance is had, and every opportunity upon earth is allowed to bring light upon the subject, and discover whether the witness was a liar. What is the result? A confirmation of every tittle. But there is another circumstance: Two or three of the jury in the latter cases were upon the jury who acquitted Leary; it was to their honour—though, perhaps, in such cases honour should not be spoken of; but it so happened that some of the jury who acquitted Leary, were upon the jury who found Kennedy guilty. So that with every prejudice which they might have derived from Leary's case upon their minds, after a trial which took up thirteen or fourteen hours, they came back in ten minutes satisfied that Kennedy was guilty.

Again, I had the good fortune to be assisted by two of the judges who presided in the former cases; they brought their notes into court with them, and, as was their duty, compared those notes with what appeared upon the latter trials, in order to discover whether there was any inconsistency. It is the fashion now to publish everything. The former trials were published; everything met the public eye; and still everything is confirmed. What was sworn to before, was sworn to again; and no part is contradicted.

I shall take leave of this part, convinced in my mind and satisfied in my conscience that the information of the witness upon every part material to the trials was founded in truth. I shall end this part with this observation: It was sworn that they intended to have put to death the jury who found Jackson guilty. It was not improbable that they who desired to murder the King and the Chancellor would have murdered a jury. When the last jury heard what the witness said, it required manliness to find a verdict of conviction after such a menace; they were convinced by facts, and they scorned to entertain any fear. They heard what might have alarmed weak minds, little, weak, traitorous minds. A juror might have said, "I will not put myself into that situation;" on the contrary, they came in manfully, in ten minutes, finding a verdict of guilty, upon their oaths and their consciences.

But after that, each jury did recommend the prisoners as objects of mercy; and assigned their single reason, that it was on account of their youth. I then said what I now repeat, that I would communicate that recommendation to government. I lost no time in it; I stated it in the very words of the jury, without adding a word of mine upon the evidence; being of opinion that I should not serve the prisoner if I did. The consideration of mercy is where it ought to be, untouched by me. It will be exercised or not, for anything I know; I form no conjecture upon it.

I now take leave of this man, and the general opinion circulated about him, that he is not to be believed upon his oath. If there be any man in court of a different opinion, he is of different materials in heart and understanding from any I know of.

Is it of consequence, or not, that these trials should go into the country truly? I think it is. It was alleged, that the verdicts were founded upon the extravagant assertions of a wretch, who should not be believed. If there be any man, who think that way, I desire no longer to discourse with him upon any subject.

Having made those impressions upon your minds, which I trust I have, with regard to the credibility of this witness, let me mention what is of more consequence to us all, and if you treat it with neglect, you do not deserve what the constitution and your oaths suppose you to possess, nay, the heads you wear. We have been labouring five years under the evils of sedition, coupled with privy conspiracy, and rebellion. One springs from the other, but fortunately as they grow up, they crumble by the weight of their own enormity and could not exist but from one cause, and that is, the criminal torpor, which prevails among you. I have observed a criminal disregard, indolence and inattention of the most apparent duty of the subject, for some time past, to such a degree as has been productive of the most serious mischief.

Here I cannot avoid obtruding a word upon you with respect to myself. The history of my life has been a history of toleration. By education, by nature and the habits of my life, I have been led to indulge toleration. I never discouraged enquiry. Bold, open debate, open argument, honest opinions, only guarded by the principles of charity, morality, good order and decency; so guarded, let your argument be as free as wind, and your words as comprehensive as language can speak. If I have misrepresented myself, I call upon the community to be witness against me. Every man feeling any regard for the common welfare must acknowledge, that the present moment is sufficient to raise suspicion, which is ever considered as the best sentinel of wisdom. I am now speaking before a number of people who have made fortunes; who are remarkable for industry; who never forgot the common good in pursuing their personal interest. I ask them, whether this be not a moment for alarm? What, that you should have a club of traitors in the bowels of your country? And have found none of them but a few boys and a soldier! Why do you not exert yourselves? You acknowledge that there is a set of people called Defenders, they come in the night; they take arms, and get money, but they mean no mischief! They take arms: Why do you suffer them? "Why, really," answers one of these supine men, "I do not know: one would not wish, to be sure, to make enemies." And what do you expect?—"Why that I shall not be the first whose throat will be cut." But if you should not be the first, you will be second; and if not the second, you will be the third. See what has been the case in France: what a succession of persons have been mowed down by the populace! The Duke of Orleans came to the block under the hands of the persons, whom he himself had raised into consequence. That may be the case here.

Another excuse is urged. "If I enquire after those who take my arms, they will cut my throat." I am not now talking lightly. What did Swift, who was a man of much political sagacity? This country had been greatly infested by a nest of robbers; by one spirited paper, teaching, that each honest man had strength enough to root out the

mischief, he obliged them, in a manner, to do that which as members of society they ought. They were pursued, laid hold of, the arms were taken from them. What is attributed to one of the Mountmorress family? With one sword he subdued seven, and brought them to the gallows. I saw the man's picture, with blood upon his face:—glorious picture! And glorious story to be told! If you have minds and spirits entertaining any regard for your parents, your children, or the constitution, which you hold dear, can it be doubted, that, with the assistance of government, the power and the sinews of government, if individuals exerted themselves for a month, these conspiracies must be suppressed. Every sensible man of every denomination should step forward; I mention not names; I call upon all ranks, whether protestants, or not;—I call upon all classes of religion to stand up and do their duty, and suppress a common evil. Who have been the instruments of it? Men who have fled from the law, or who have suffered under it. Can it be doubted then, when you have every man of property to watch, and detect abuses of so mischievous a nature, that they could not be suppressed? Take notice of every person within and without your houses; observe what their opinions and occupations are; where they spend their time, and how they are employed. I am not talking now to infants, or boys;—if due vigilance be exerted for a month, a Defender could not exist for a month within forty miles of Dublin. These are either servants, or apprentice boys; or workmen. Look then into your houses, and see how your tenants, domestics and others are employed; examine public-houses; see what the general conduct is, that people do not lose their senses by excess. Want of morality becomes a necessary consequence of want of sense in such cases. We see in this great town, swarms at every lane, debauching the morals of its inhabitants. Men have been punished by the pillory, for what?—for endeavouring to corrupt the minds of the youth by obscene pictures, and yet I have seen twenty men, with smiles and smirks, as if they were pleased and delighted with scandalous representations. What are magistrates for, if these abuses be tolerated? Point your minds to Scotland:—she is a model of temperance, of understanding, of wisdom, of religion of decency to all the world, and she has thriven accordingly. It is not, that the Scotch are a fortunate people. No, it does not depend upon fortune; it is good sense, and good conduct. There is not a drunken creature to be met with there in a month. Whereas here, I am sorry to say, that I have more pain in keeping my horse from trampling upon drunken people of a Sunday than from any care of myself; in defiance of all decency, they seem to have come drunk into the world, and they determine to go drunk out of it.

But see the consequence of this: people are rendered ripe for any mischief. Exert yourselves then to stop this evil. Call for aid in this undertaking, and if you find the magistrate or the friend disregard you, mark that man, no matter what his religion, or tenets may be, whether he carries the prayer-book, or the breviary, the Koran or Confucius, if he do not assist you when he can he is a Defender, and treat him as such.

Make men give an account of their conduct. See what is done, and declare what ought to be done. Any act which makes a man

accessary in felony, makes him a principal in treason. If he comforts, and abets a traitor, knowing him to be such, he becomes a principal in treason; therefore it behoves him to take care how he keeps in his mind the knowledge of a man being a Defender. Every man who protects, who assists, or abets, upholds, or harbours a traitor, knowing him to be such, is in the eye of the law and common sense a traitor, and liable to the penalties of treason. The next offence is misprision of treason, and that is, where a man knows a person to be a Defender, and conceals it; there he is guilty of a misprision of treason, which is punished with the forfeiture of goods and chattels, and imprisonment for the life of the party.

I am stating this in the presence of many knowing the profession. If I mis-state, let me be corrected. I am speaking before an auditory consisting of hundreds. Is it not probable, that many of those who hear me are trembling at the idea of having assisted Defenders, or having been guilty of misprision in not discovering them? It is therefore time to watch their own conduct. I have given them fair warning. I have told them the law, as it was my duty to do, at an important and alarming period. I scorn the consequences so far as they may affect my own person. If this infamy is to disgrace your country (an infamy which it has escaped for an hundred years, for Jackson was the first traitor tried here for a century, and you see they are thickening and increasing), so may God judge me as I had rather die to-morrow. I am not speaking for myself. I have means of protection, which many have not. But your spirit and integrity is your best protection—it is the protection of the humblest among you. Honest virtue and spirit triumph over all the vices of the earth.

Adopt as many of these sentiments as come home to your hearts, and the situation you are in. I hope I have, in thus addressing you, done some good; I certainly did not mean to do any harm.

MR. ATTORNEY-GENERAL.—Is it your lordship's wish to mention any day for execution to be done upon these men?

LORD CLONMEL.—Mention the day yourself; we will adopt your sentiments.

MR. ATTORNEY-GENERAL.—I had no particular day in contemplation. We wish nothing more than that of making these prosecutions have the effect which was intended, namely, the effect arising from example.

LORD CLONMEL.—You can have no other object. One of the prisoners mentioned with some sharpness, that a man not recommended had ten weeks. Do you think a month will do?

MR. ATTORNEY-GENERAL.—My lord, I have no other object, than what I mentioned. But the compassionate course to be taken is to make examples as soon as may be consistent with humanity—to shew the people, they cannot escape punishment, and thereby prevent other fellow creatures from following the like crimes.

LORD CLONMEL.—Suppose we appoint this day fortnight.

MR. ATTORNEY-GENERAL.—My lord, that will give time enough for those who have power to extend mercy, if they choose to do so. But the prisoners should not entertain such an idea themselves. I wished the day not to be too distant, lest the prisoners might indulge

expectations, which were not afterwards to be gratified, and at the same time not to encourage those who are taught by every possible means, that government is disinclined to execute the law. Every person in court has discharged his duty with coolness, deliberation, and impartiality, and my only desire is, that the prisoners may not be impressed with an idea that they are not to suffer, which might be fatal to them hereafter. And people should not go away with an idea, that there is a weakness in the government. If any man mistake me, I cannot speak plainer than I have done.

Mr. Justice CHAMBERLAIN.—From what has happened this day, I think my brother George and I should mention why we appointed a distant day for Weldon. I declare most solemnly, that it was not from any doubt of the propriety of the verdict, but the circumstances were very particular at the time of the sentence. One jury upon Lawler's evidence convicted Weldon. Another jury upon the same evidence had acquitted Leary; and it was clear, that the same Lawler would be again produced at this commission. We could not foresee what would happen; and if it had happened, that Lawler was discredited by a jury, it would be our duty to recommend Weldon. Therefore a day was appointed for his execution, after this commission, for the purpose of ascertaining to the public satisfaction, whether Lawler was deserving of credit or not; and that was the only motive. We should be deserving of public censure, indeed we should receive our own censure, if we sentenced Weldon and allowed him to suffer, and afterwards Lawler should be discredited. I mention this, because in every case of this kind, it is highly essential, that the public should be satisfied.

Mr. Baron GEORGE.—As Judge Chamberlain has mentioned, that there was no doubt in the minds of the judges who presided upon Weldon's trial, as to his guilt, I think it proper to declare, that I myself have no doubt of his guilt. But from the circumstance of Leary having been acquitted, we thought the ends of justice required, that the progress of justice should go forward in such a manner, that no event should arise to discredit that justice. It is not only necessary that judges should be satisfied; but we thought the ends of justice required, that occasion should be given to prove the guilt of those persons to demonstration. The infliction of such severe punishment, as is denounced upon crimes of this sort, ought to be done with the utmost deliberation, more especially where the crown, for the safety of the state, is the prosecutor. There should be nothing hasty, vindictive, or passionate, that people may see government intends nothing more than the distribution of justice in mercy. For these reasons, and as in cases of this sort, nothing like mistake should intervene, we postponed the execution of Weldon, that every man in the kingdom might see the nature of the evidence. But it was not in consequence of any doubt whatsoever that rested in the minds of any of the judges. This was the opinion of Mr. Justice Finucane, who is now absent. If he were here, he would declare the same better than I can for him.

Mr. ATTORNEY-GENERAL.—I am apprehensive what I said was not perfectly understood. I had no objection to a distant day; and so far from it, that if my humble opinion were necessary, I did approve

of the delay ; and if my opinion had been desired, I would have recommended a postponement.

Saturday the 12th of March was appointed for the execution.

Hugh CROTHERS, Esq., foreman of the city grand jury, addressed the court and read a resolution passed by the grand jury, expressing their sincere thanks to Lord Chief-Justice Clonmel for his able and spirited address to them, and requesting his lordship's permission to have it printed.

LORD CLONMEL said he acknowledged the favour and was grateful for the compliment conveyed by the grand jury. He hoped what he said made a due impression upon their minds ; but was sorry he could not comply with their request, as he had not prepared any notes for the occasion.

The following day the High Sheriff of the county communicated to his lordship a similar resolution of the county grand jury, to which his lordship returned a similar answer.

Weldon was executed at the front of Newgate pursuant to his sentence.

Kennedy and Hart were respited until the 19th of March, when Hart was executed. A further respite has been granted to Kennedy.

A REPORT OF A TRIAL FOR A CONSPIRACY.

COMMISSION.

MONDAY, February 22, 1796.

The Grand Jury having found the following indictment, the persons therein named were this day arraigned.

County of the City of Dublin, to wit. } “THE jurors of our Lord the King upon their oath present that Andrew Glennan, of the city of Dublin, yeoman, Philip Kane, Owen Reilly, Charles Soraghan, Patrick Kinshela, Michael Sleaven, John Connor, Hugh Byrne, Michael Walsh, John Ratican, James Carmichael, James Connor, and James Dempsey, of the said city, yeomen, being persons of evil name and dishonest conversation, on the 31st of January, in the 36th year of the reign, &c., at Suffolk-street, &c., contriving and intending one John Hanlon wrongfully to oppress and aggrieve, and him to death and final destruction to bring and cause and procure to be brought on the same day, year and place with force and arms, &c., unlawfully, wickedly, and maliciously did conspire, confederate, and agree the said John Hanlon feloniously, wilfully, and of their malice aforethought to kill and murder, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

The prisoners severally pleaded Not Guilty; and a jury being sworn, the prisoners were given in charge.

MR. ATTORNEY-GENERAL.—My lord and gentlemen of the jury, this is an indictment against the prisoners, for conspiring to put to death John Hanlon, a soldier in the Artillery. Gentlemen, the mentioning of such a crime alone must impress every mind with horror, and I am sorry to be able to state, in the hearing of my fellow-creatures, that the crime is growing too familiar in the lower orders of the people. I do not say this with a desire to see conviction pass upon these people but to show how necessary it is to examine into the matter with all possible attention; that if the prisoners be guilty, they may be found so, and examples made to deter others from offending in like cases.

Gentlemen, the circumstances of this case are very few. It is known very well that seditious conspiracies have existed within this kingdom

for a considerable time; they have been entered into by persons associated as Defenders. Several persons have been brought to trial, and some have been punished for their offences, amounting to high treason. Some who have been accused and arrested yet remain to be tried. In the town of Naas there at present remain several persons, some indicted at the last assizes, and some have been apprehended since—all charged with some species of crime or other, which fall under the general denomination of Defenderism.* Among these men, remaining in a gaol at Naas, is a man of the name of Gavacen, who lived near Kilcock. He stands charged with several offences, and will be brought to trial next week.† He is brother-in-law of Glennan, the prisoner. Gentlemen, the prisoner, Glennan, is a dairy-man, and lives in Bow-street, in the city of Dublin. It has been the diabolical policy, adopted by these people, to prevent their associates from being brought to justice when apprehended, by assassinating the persons supposed to be witnesses against them. Glennan conceived the design of assassinating John Hanlon, whom he supposed would be a witness against the prisoners in Naas, and amongst the rest his brother-in-law. A man of the name of Thomas Smith is a gunner in the Artillery. He was known to Glennan for some time, and was high in his confidence. Smith had, in a way that he will describe to you, associated himself at a distant period back with some persons who had entered into these conspiracies. He had remained with them but a short while, when he became sensible of the situation in which he stood, and made known to Government the conspiracy which existed against it. Glennan being desirous to procure the acquittal of Gavacen and the others in Naas, conceived, that through Smith, the soldier in the Artillery, he might easily effect the assassination of Hanlon, whom he supposed would be a witness against the prisoners in that town. Gentlemen, in order to bring to effect this purpose, some time in the beginning of January he sent for Smith to come to his house. Smith obeyed the summons, and on Sunday, the 3d of January, he came to the house of Glennan, at Bow-bridge. Glennan there told Smith that there were several Defenders remaining for trial in the gaol of Naas, and asked him if he knew Hanlon, who had some time before enlisted. Smith said he did. Glennan then said, he was to be a witness against the Defenders in Naas, that he must be murdered, and he told him that he expected through the means of Smith to be able to effect his purpose. After some further conversation it was agreed that a meeting should be had at the house of Carmichael, who keeps a public-house in Thomas-street. A meeting of the "boys," as they denominated it, took place upon Sunday, the 24th of January, in order to confer upon the means of effecting their plan. Upon the 24th, Smith came to the house of Carmichael, and there he met Glennan and several of the persons now at the bar, and there

* At the Spring Assizes for Kildare, 1796, three persons who had been indicted for high treason submitted, and three indicted for administering unlawful oaths were found guilty upon the testimony of Hanlon. Three men were found guilty for being concerned in shooting at Mr. Ryan, and two others, indicted for the same offence, submitted.

† Gavacen was afterwards convicted of administering an unlawful oath, upon the testimony of one Kelly.

they did confer together upon the means of assassinating Hanlon. They desired that Smith should prevail with Hanlon to come to town upon the ensuing Sunday to Carmichael's, where they would meet Glennan and the rest of the associates, that they would accompany Smith and Hanlon back again, and throw him into the Liffey, as they walked along the path. Smith communicated this scheme to Serjeant-Major Lane, of the Artillery, at Chapelizod, who directed Smith to go to town according to the appointment, and to bring Hanlon along with him. Accordingly on Sunday evening they went together, Hanlon accompanying Smith. In their way to town Hanlon asked Smith for what purpose they were sent to town at that hour in the evening; upon which Smith disclosed to Hanlon the purpose for which they were sent. Hanlon then hesitated to go, but Smith told him he was safe, for that Alderman Alexander and Alderman Tweedy were informed of the whole transaction—that a party of the peace-officers were assembled at Watling-street, near the house of Carmichael, and it was agreed that a person should be sent in to give a signal when the party were assembled, that they might be arrested.

Smith and Hanlon then proceeded to town, and in their way the former stepped into the house of Glennan who expressed his happiness; said he was glad to see the "lad," desired them to go to Carmichael's, and the "boys" would follow. Smith and Hanlon accordingly went to Carmichael's; there they found two or three, and presently were joined by others, and addressed Smith as if he had not seen him before. They talked together for a while, and whispered somewhat about the design, but not in the hearing of Hanlon, though in his view, so that he could not go away without being perceived. The signal was then given—the party came in—the persons at the bar were all arrested, and instantly committed.

This, gentlemen, is a state of the facts which will be proved, and if you believe them, they necessarily draw the conclusion, that the prisoners are guilty of the offence charged against them. Some other incidental circumstances will come out, but they do not go directly to the facts charged, though they go to establish them; they will be told by Smith, and they give credit to his evidence, if he required corroboration. Gentlemen, he is not an accomplice; he had no intention to commit the crime; his object was to prevent it, if he could. It will appear, when the magistrates came, these people pulled papers from their pockets and threw them under the seat—papers directly evincing their intention of committing high treason. One of those papers was the Defender's Catechism, in express words declaring their reliance upon the French Convention, and that their object was to dethrone all kings. Upon some were found papers of a like tendency. This shows clearly their intention to commit the crime. Smith will be corroborated by the evidence of the magistrates and other persons. When the facts shall be proved, there can be no doubt of the prisoners' guilt; and if they be guilty, we can only lament that crimes of the deepest dye can be punished but as a misdemeanor.

Thomas Smith, sworn.—Examined by the SOLICITOR-GENERAL.

Q. Do you recollect the 3d of January last? A. I do.

Q. Do you remember to have called upon anybody that day? A.

At the house of Andrew Glennan, No. 7, Bow-bridge: there he is (pointing at the prisoner in the dock).

Q. Had you any conversation with him? A. Yes: he treated me to a beef-steak, and then took me out, and gave me two pots of porter.

Q. What conversation had you with him? A. The first person that broke the discourse was Glennan's wife. She asked me if there was a recruit in the Artillery of the name of Hanlon.

Q. What answer did you make? A. I told her I did not know him, nor did I at the time; I then recollected and said, I did know him, that he lived a few doors from me. Glennan said you are the very man the business lies upon. He must be settled. I shall way-lay him and kill him.

Q. Did he assign any other reason? A. Glennan said there was to the amount of eleven Defenders in Naas, one of whom was brother-in-law to him (Glennan), and Hanlon was to prosecute them at the next assizes.

Q. (By the Court.—Did he say what they were in for? A. For Defenderism.)

Q. You said one of the persons confined was Gavacen? A. Yes: he was brother to Mrs. Glennan.

Q. How came you to be in terms of intimacy with Glennan? A. I was sworn in January 1795, as a Defender, in James Doyle's house, George's-quay, and Glennan and Doyle stood by, as commanding officers of the regiment.

Q. That connection subsisted? A. Yes, it did.

Q. After the conversation terminated, was any appointment made? A. Yes: I was to come as conveniently as I could, and to make up an intimacy with Hanlon in the meantime, and bring him to Glennan's house.

Q. You belong to the regiment of Artillery? A. I do.

Q. You were then in that regiment? A. I was.

Q. Did you inform any person of this conversation? A. When I came home and found Hanlon was to be murdered, next morning upon parade I called Serjeant-Major Lane aside, and told him the whole. I told him I was to set Hanlon, and Glennan was to murder him. I met Glennan afterwards, when I went to George's-quay, and William Keeling, and James Ward, Defenders. They go by so many names, it is hard to know them.

Q. Did you go anywhere? A. Yes, they brought me into a public-house.

Q. (By the Court.—They were Defenders? A. Yes.)

Q. What passed? A. Glennan opened the discourse, and informed the other two that I was the man who could set Hanlon, and bring him forward to be murdered.

Q. You mean Glennan, the prisoner? A. The present man there.

Q. What further did he say? A. I was to meet him as soon as possible again.

Q. Was that part of the conversation? A. On that day it was, and on or about the 24th of January.

Q. For the same business? A. Yes.

Q. How soon after did you meet them? A. On the 24th of January.

Q. Did you see Hanlon between that day and the former day?
A. I saw him upon duty, but had no conversation with him.

Q. Did you see him upon the 24th? A. I do not know the exact day: but I had no conversation with him. I had no conversation with him three times in my life, until I was sent to have him murdered.

Q. What happened upon the 24th? A. I went to Glennan's upon Bow-bridge. Word was left that he was gone to Carmichael's, 21, Thomas-street.

Q. Mention whether you met Glennan at Carmichael's? A. I did.

Q. Is Carmichael at the bar? A. He is. There he is (pointing to him.)

Q. Who else was there? Was there any other? A. Yes: Patrick Kinshela, Michael Sleaven or Shanagan—to the best of my knowledge he was there.

Q. Are you certain whether he was there or not? A. I am positive.

Q. Do you see anybody else who was there? A. Yes, a good many—no not that day.

Q. What conversation happened in the presence of these you have mentioned, upon the 24th? A. The conversation that happened that day with Kinshela, Sleaven and Glennan was for me to bring in Hanlon.

Q. Was Carmichael present? A. No: he was attending his business in the house.

Q. Was he present at any part of the conversation? A. Not belonging to Hanlon.

Q. Now mention the conversation between the other persons upon that day? A. I was to bring in Hanlon, and they were all to murder Hanlon upon the Long Meadows, going down from Bow-bridge. I was asked could I bring Hanlon next Sunday. I said, I did not know, the duty being severe, and perhaps I might be on duty myself, or he might. Sleaven said "you must bring him in, I have been watching a week for him, and if I wait until Sunday it will be a fortnight; if another Sunday, it will be three weeks." I said I would call upon Glennan on Thursday, and let him know whether I could bring in Hanlon on Sunday or not.

Q. Did any conversation happen about what they were to do with Hanlon? A. To murder him upon the Long Meadows, and throw his body into the river.

Q. (By the Court.)—How many knew that purpose? A. Glennan, Kinshela, and Sleaven.

Q. Anybody else at the bar? A. Nobody else at the bar.)

Q. You undertook to come in on Thursday, did you come in? A. I did.

Q. Whom did you see? A. Glennan, at his house.

Q. What happened? A. He told me he saw Kinshela, and asked me if I could bring in Hanlon—I told him I could—he told me, before he would eat his breakfast next morning he would be with Kinshela, and give him word, and they would be fully prepared for the murder of Hanlon.

Q. Did you bring Hanlon the next Sunday? A. I did, by order of Serjeant-Major Lane, from parade.

Q. Then during this time you had frequent communications with

Serjeant-Major Lane? A. I had every day; as anything passed, when I came home I let Serjeant-Major Lane know it.

Q. You came on the Sunday following? A. I did.

Q. Where? A. To the house of Glennan.

Q. Hanlon walked with you? A. He did till we came half way through the fields when he stopped and said, "now, Smith, where am I going."

Q. (By the Court.—Where was that? A. About half-way between Island-bridge and Bow-bridge.

Q. In the Long Meadows? A. Yes.

Q. What hour of the day? A. It was coming the dusk of the evening; we were at Glennan's at night-fall, and at this time we were half-a-mile from his house.)

Q. What answer did you make to Hanlon? A. I told him he was going to be murdered. He made a halt and said he would not come. I told him he should come, and, with the help of God, I would bring him home safe.

Q. Did he consent? A. He came forward and said, "take care, perhaps they might poison me unknown to you."

Q. (By the Court.—Who did he mean by they? A. I told him the secret; the whole business from beginning to end, as we were going through the fields.)

Q. You satisfied him? A. I did.

Q. You came to Glennan's? A. Yes.

Q. Was he at home? A. He was after dining; there was a man standing in the floor with him, with the appearance of a gentleman with boots and good clothes; I do not know who he was.

Q. Did the gentleman in the boots say anything? A. No.

Q. Did Glennan say anything? A. He did; he asked me "had I Hanlon." I told him I had.

Q. Did he ask it in the presence of the gentleman? A. He did, out plump before him.

Q. (By the Court.—Where was Hanlon at that time? A. He was outside of Glennan's house.)

Q. Did Glennan make an answer when you told him? A. Glennan said, "wheel him up to Carmichael's, and all the boys will be up after you, by and bye."

Q. (By the Court.—Did you understand what the boys meant? A. To be sure, the party that was to murder Hanlon, that Glennan was to bring.

Q. In the dusk of the evening? A. Yes.)

Q. You went up to Carmichael's? A. Yes.

Q. What happened there? A. We had two pots of threepenny.

Q. Who? A. Hanlon and I; nobody else had come there: Glennan had ordered me to call for what I liked, and not to spare cost; when we called for the threepenny, in walked Patrick Kinshela.

Q. Who else came in? A. There came about six in all.

Q. Mention their names? A. I cannot give their distinct names. But I can shew them.

Q. Point them out? A. I do not know their names; Philip Kane was the man who came forward to the counter, and said "he was the man who would do for Hanlon!" Andrew Glennan was there;

Owen Reily was there : I was often in his company as a Defender. Byrne said he would convey Hanlon a piece of the way home. The prisoners are all in different appearances from what they were in at the time. I have no call to say to Carmichael whatsoever, as to the murder of Hanlon.

Q. Did they all come at once? A. Kinshela came with the first party, and then the other party came in.

Q. Did they converse together? A. The word was this, they were to ask "who was with me;" I was to answer, "Hanlon a recruit, a friend of mine, who came in to take a drink."

Q. Did they ask you? A. They did, and I told them; we were sitting in Carmichael's front tap-room, opposite the fire; as you go in you turn to the right; we were sitting there when they came in. Kinshela and the party moved to the centre tap-room when they came in, and they called for two large jugs of punch, and some beef-steaks. The jugs held two quarts, or three pints; we drank until such time as Glennan and his party came in.

Q. When Glennan and his party came in, was there any further conversation? A. The same as before.

Q. Did Glennan ask you as the other had? A. Surely; they all shook me by the hand, and I thought they would force my arms from my shoulders. I wanted to be near, and got near the door; Alderman Alexander's man was in the front tap-room drinking with another person.

Q. He was there you say? A. He had been with me there the night before; I shewed him where to sit privately, and how to act for taking these people. I told him I would give him a signal, when to take the people.

Q. Do you know his name? A. No.

Q. How long did you sit before the signal was given? A. We were not sitting long; some made me sit on their knees; Sleaven was running about like a distracted man, and he said, "when this business is completed, I will bring 18,000 men to Dublin on the following."

Q. Did Glennan hear? A. Certainly, and Kinshela too.

Q. Did Alderman Alexander's man hear? A. No.

Q. You talked about a sign, what sign? Was it a Defender's sign? A. No; I was to take off my hat, to scratch my head, and give a cough: I did so, and Alderman Alexander's man went out for the party.

Q. Was there any further conversation between you, relative to the party? A. None; we sat down, and the second toast we drank was, "bad luck to all bad Defenders."

Q. Was that so loud as that all the company could hear it? A. It was; the whole house could hear it—it was not hid in a bushel.

After that, did anything remarkable happen? A. I do not know what happened between Hanlon then, because I went to the door, near the front tap-room; but I had my eye upon Hanlon, for fear of any danger to him. They were all so fond of me, some shaking me by the hand, and almost pulling my arms off.

Q. How soon after did the guard come? A. I had not time to take a glass of punch before they came.

Q. What happened after? A. Colonel Alexander came in, and that gentleman (Alderman Tweedy).

Q. What did they do? A. They desired the constable to make me prisoner, and take me one side, out of their company, for fear they should hurt me. The Alderman then took the prisoners one after another, and desired me to pinch his arm as any of the party passed; a man was then put upon each side of the prisoners, until they were brought to the office.

Q. Were they searched? A. They were.

Q. Did you see any paper? A. No.

Q. Hanlon was there that time? A. He was all the time, and can tell what passed. There was a paper taken out at Alderman Alexander's office, and read.

Q. Out of whose pocket. A. I do not know.

Cross-examined by Mr. M'NALLY.

Q. How long have you been in the Artillery? A. Since the 15th of April, 1795.

Q. Was it before, or after you were enlisted, you were sworn a Defender? A. Before.

Q. Were you intimately acquainted with Glennan before you went into the Artillery? A. I was.

Q. Did Glennan hold any conversation with you about going into the Artillery? A. I'll tell you the reason I went in. I was a Protestant all my life, and so was my father and grandfather since King William's time. I was obliged to hide my bible and prayer-book, and I consulted with my wife, and determined to go into the army, to practice my profession as usual. I was obliged to make my daughter deny that she was a Protestant born, and make her say, she went to mass.

[Here the witness was examined by the Court.]

Q. When did you hear of their intentions? A. In February 1795.

Q. What did you hear? A. They were talking in Connor's house—we expected every day a massacre and rebellion was to break out—no Protestant was to be left alive. We were to serve under Sir Edward Bellew, and were sworn to that. The oath was to serve under James Cole, Sir Edward Bellew, Napper Tandy, and Hamilton Rowan. There were sheets of paper and they swore to it, as they said. I gave information. They were to have no King; they said “we will recover our estates, sweep clean the Protestants, kill the Lord Lieutenant, and leave none alive.” There were a good many more there.

Q. What do you say were their determinations, as you can recollect them? A. The oath was to serve Sir Edward Bellew, James Cole, Napper Tandy, and Hamilton Rowan—to serve France and Ireland.

Q. What did you say about the Lord Lieutenant? A. We were one morning at Connor's, Glennan, Dempsey, and others; we came to a resolution of shooting the Lord Lieutenant.

Q. Upon what day was that? A. I do not know; it was upon a Sunday, as he passed through the Park. We were to take the

Magazine in the Park, the Castle of Dublin, and put all the nobility therein to death.

Q. You said you were in constant expectation of something? A. Of the rebellion breaking out.

Q. Where? A. In Dublin.

Q. When did that commence? A. Last April, 1795.

Q. How do you know it was in April last? A. It was sometime about April, or March; it was about that time I listed; I gave information so often to Captain Burgh and to the noblemen in Dublin and Ireland, and seeing no notice taken of it, I was sure I would come to a bad end.

Q. To whom did you give information beside Captain Burgh? A. I was brought to the Castle and saw three or four lords with stars. I do not know who they were; Captain Burgh knew who they were.

Q. You gave information you say early in 1796? A. I did in January, 1795.

Q. To whom? A. To Captain Legge and Captain Burgh, and other gentlemen, I do not know them.

Q. You said you saw persons with stars? A. I did.

Q. Do you remember how many? A. To the best of my knowledge three or four.

Q. What part of the Castle? A. As you go into the upper Castle-gate, from the lower, on the left there is a door in the corner, I went in there.

Q. Were you examined? A. I was.

Q. Who examined you? A. The gentleman there.

Q. Were there any gentlemen of the bar there? A. I do not know.

Q. What hour of the day or night was it? A. It was early; in the month of April. When I spoke of January, it was in the evening.

Q. Were you examined another time? A. Yes, I saw Captain Burgh there.

Q. Who do you mean by noblemen? A. The noblemen I saw there. There was another gentleman with Captain Burgh there. I did all I could to get forward, but could get nothing done.

Q. In what situation were you? A. I kept a porter-house in Garden-lane.

Q. You were twice examined at the Castle? A. I was.

Q. Consider before you answer; by virtue of your oath, was there any person there dressed like a lawyer at any time you were examined? A. There was a person dressed in black, but I did not know whether he was a lawyer.

Q. Do you know him? A. No.

Q. How many were there? A. Three or four.

Q. Where did you see the people with stars? A. In that room.

Q. Did you know any of them? A. There was a gentleman with a small black patch upon his face, I did not know him.

Q. What was the last time you were examined in the Castle? A. In the month of April.

Q. First in January? A. Yes.

Q. Were the same persons present the last time as at first? A. No: first there was Captains Burgh and Legge and a gentleman, I believe the secretary of the Board of Ordnance.

Q. Who the second time? A. The gentlemen with stars, and Captain Burgh was called upon to see whether I had told him before.

Q. He is alive? A. Yes.

Q. Was he present at the examination? A. No, but he came forward being sent for, and specified that I told him before.

Cross-examination resumed.

Q. You in order to preserve to yourself the free exercise of your religion, went into the Artillery? A. In order to preserve a free life, and the exercise of my religion, and to save a number of innocent persons in the kingdom.

Q. Before you went into the Artillery, you had been an old Defender? A. I had.

Q. But you became so frightened at the wickedness of that society, that you went into the Artillery? A. I did.

Q. How soon after you were sworn, did you come to the resolution of shooting the Lord Lieutenant? Did you give information? A. That was before I went into the Artillery.

Q. Did you give any information of the intention to shoot the Lord Lieutenant until you went into the Artillery? A. I did. I hired a chair, and paid eighteen pence for it to go to Burgh.

Q. How long after the resolution was taken? A. At that time but a day or two after. I lost no time, but went immediately after.

Q. Did you immediately on its occurring to your mind that your religion and life were in danger, give up your connection with Defenders? A. I did till they followed me to Chapelizod.

Q. Did you not go to the house of Glennan? A. But it was a long time before that they followed me to Chapelizod.

Q. You followed him to Bow-bridge? A. Yes, but he and many others followed me first.

Q. Did you assign any reason for going into the Artillery? A. I did: I went for poverty. They asked me why I did not apply? I said I would not ask any friend.

Q. Is not the Artillery known to be a Protestant corps? A. It is a free corps for any man who conducts himself well, and promotion is free for any man.

Q. Did you ever see an advertisement for recruiting in the Artillery? A. I did.

Q. Do they not state that the men must be Protestants, and of good character? A. That time was, but now they take any men in the way, and if they conduct themselves well may be promoted.

Q. Was not the qualification inserted in the last advertisement? A. I did not see one these five years.

Q. Is it not the custom to insert it down to this day? A. I do not believe it—of a Sunday, when we parade at Chapelizod every man is dressed and when church-bell rings, the drum beats, and those who go to mass, turn to the left, and it is free for the exercise of religion, every man does as he pleases.

Q. You and Glennan have been acquainted for a considerable time ?
A. From the 1st of January, 1795.

Q. You kept a porter-house in Garden-lane ? A. I did.

Q. Did Glennan resort to your house there ? A. He did.

Q. Did you at that time go to any place of worship ? A. No. I went two or three times with them to mass, but never went withinside a church door.

Q. You became a Defender in 1795 ? A. I did.

Q. And you continued down to April, the time you enlisted ?
A. I did.

Q. Do you not believe that your entering into the Artillery intimated to these people that you were a Protestant ? A. No ; I am positive it did not.

Q. Did you continue to deny your religion after ? A. No ; I went to church freely as any other man.

Q. After that did you visit Glennan and the others as a Defender ?
A. I did.

Q. When they followed you, as you say, to Chapelizod, had you no apprehension that these men, who were to sweep the Protestants, would sweep you ? A. I had apprehensions of it, and seldom expected anything else.

Q. And did you not go alone to the house of Glennan ? A. I did with Hanlon.

Q. Did you not go without him ? A. I did, often alone.

Q. Did you not conceive from the description you have given of Glennan, that he was one who would sweep off the Protestants ?
A. I was.

Q. And yet you went to him ? A. I went there through fear of my life.

Q. From that fear you went into the Artillery ? A. I did. I went to Glennan's by order of Serjeant Lane.

Q. Hanlon and you were not intimate ? A. No.

Q. The first intimation he had, that he was to be murdered, was upon the bank of the river ? A. It was.

Q. Between Island-bridge and Chapelizod ? A. It was.

Q. You were afraid of being cut off by these people, and cautioned Hanlon to defend himself ? A. No ; I told him nothing till we left Chapelizod.

Q. He was unarmed ? A. No ; he had his side-arms.

Q. Had you been on terms of intimacy with all the prisoners ?
A. I was often in their company, but did not know their names ; these Defenders give themselves extraordinary names.

Q. Are you so well acquainted, as to swear to their faces ? A. Did I not do so already ? I swear they are the men, who were by to murder Hanlon and none other.

Q. Do you take upon you to swear, that all the ten men in the dock were present and overheard the conversation respecting the murder ? I am positive they were all consenting, and were to assist in it.

Q. Was the proposal to murder Hanlon so loud, that every man could hear it ? A. Certainly.

Q. How large was the room ? A. It was a large room.

Q. I am speaking of the last night? A. Sure they did not talk of the murder of Hanlon before his face.

Q. Did any person come in? A. It was a free house.

Q. Did any person come in, and who were at the fireside? A. I am not positive.

Q. Are you positive they were all present at the consultation to murder Hanlon? A. No; there were twenty there.

Q. Now, I ask you, were all the men at the bar in the room that night? A. I am not positive.

Q. Who were there the first night? A. There were a great many—but all who were taken on the last night by my directions knew the plot.

John Hanlon, sworn.—Examined by Mr. PRIME-SERGEANT.

Q. Do you remember the 31st of January last? A. I do.

Q. Did you receive any order from Serjeant-Major Lane that day? A. I did.

Q. What was it? A. To come into town along with Smith, I did not know for what, till I came half-way; Smith stopped for a moment; Smith said, "you are going to be murdered;" I said, I would not go; he said, not to fear, and told me the way. I then said I would go, if it was to the mouth of a six-pounder. We came to Glennan's, I leaned my shoulder to the door, Smith went in, and Glennan said, "wheel up the lad to Carmichael's, and drink the best." We did so. They came in two parties, five or six each. They removed us from the place, being a small room; they took Smith upon their knees, they were so glad to see him. I drank heartily, sure enough, and after some time, I said, it was growing late, for I should be put into the guard-house. He went to the door, and a crowd came in. I was pleased to see them, and took courage, and drank hearty. Smith was taken and the rest brought together. They drank "present death and confusion to all bad Defenders,"—that was against me for betraying them.

Q. You were to give information against Defenders? A. I gave information against a party for a design to kill the Rev. Mr. Walsh at Kilcock.

Q. Point out the men? A. I think they were all there (here he pointed several of the prisoners)—it was candle-light, and I was in much confusion, but I give my affidavit this man was there (pointing at Owen Reily), and this man (Peter Kinshela), and this man (Simon Walsh), and this man, (Andrew Glennan), and this man (Hugh Byrne).

Q. Were all the persons there that night taken into custody? A. They were, ten I think and the landlord.

Cross-examined by Mr. GREEN.

Q. How long were you acquainted with these men before? A. Never, not one man.

Q. How long were you in their company that night? A. Perhaps three quarters of an hour.

Q. Were they not divided by separate benches? A. No; because

the first party that came in took us out of a small bench, and brought us into a spacious place.

Q. You were a good deal terrified? A. I was, certainly.

Q. You had not seen them before? A. No, not one.

Q. How then are you so certain as to their being in the same place? A. By their expressions.

Q. You cannot say, what dress they were in? A. I did not examine their dress.

Q. Have they the same now which they had that night? A. I am sure they have part of it. I swear to the five men—the very identical men.

Q. They suspected you to be a Defender? A. I was taken in to be a Defender by a north-country man at Kilcock, a stone-cutter, and I was obliged to swear, or I would not come out alive.

Q. You drank very heartily? A. Three pints and a half of punch.

Q. How much had you taken before the crowd appeared? A. Two pots of beer and two jugs of punch.

Q. You mentioned to Smith, that you were afraid of staying? A. I did, seeing them going about.

Q. You knew the officer had given you leave to go? A. He did. But I did not know, not seeing the constables coming, how much danger there might be.

Q. Did you declare the night the persons were taken, that you had no charge against Reily? A. What charge could I have against any of them, but for their oaths and declarations?

Alderman Alexander, sworn.—Examined by Mr. SAUBIN.

Q. Do you recollect getting information from Smith? A. I do.

Q. What was the time and what the nature of the information? A. A person called upon me at William-street, and said, that a person of the name of Smith would give information against sworn Defenders, and who were swearing Defenders, and that if I would meet him at any time, where he would not be suspected, he would meet me. I appointed the next morning at ten o'clock: he came and he told the story exactly as he related it here.

Q. You heard him give his testimony here? A. I did.

Q. And the information he gave you was exactly the same as the account he gave here? A. Exactly.

Q. Did you mention the time this happened? A. It was the Thursday before these people were taken up—the 28th, I believe. I fixed with Smith at the office to call at my own house at four o'clock, and I sent for Alderman Tweedy. Smith came and gave examinations against these people. I agreed that he should go to the house with my men, in order to take them when they were assembled, by giving a signal. At the time appointed, two men were stationed at the house; I was told the sign was made; I came down with a party to Carmichael's house and took them. I spoke to Smith and desired him to identify them. He asked me, how? I told him, when I asked any of them what his name was, if he was of the party, to give my arm a pinch. I asked each man his name and Smith gave me a pinch.

Q. How many? A. Ten and the landlord—he was not sitting at the table.

Q. Can you identify them? A. Six of them I can—their dresses are all altered—that man, Sleaven or Shamrogue I know very well. Glennan I recollect perfectly well—I remember Reilly too—we brought them all up to Alderman Tweedy's office, and he committed them.

Q. Was the Alderman there at the time the prisoners were brought? A. He was at the office.

Q. Did you see anything more? A. There was a paper under the table, a sort of catechism. He pulled another paper out of the pockets of one of the party. Here are the papers.

Alderman Tweedy, sworn.—Examined by Mr. WORTHINGTON.

Q. Did Alderman Alexander give into your care any persons on the 31st of January last? A. He did.

Q. Look round and try if you see them. A. I do; to the best of my belief they are the persons. I put them into a dock, and took them out one by one, and Smith identified them all. I gave them to the constable.

Q. Who brought them to Newgate from your office? A. My constables.

Q. Have you any of those constables here? A. No.

Q. Did you find anything upon any of the prisoners? A. I found a bible, and a manual, and this pocket-book, in which there was a paper with some powder in it. Under the table where they were sitting, I found a number of bits of paper which I endeavoured to put together, but I could not. Under the seat I found this kind of catechism.

Q. You sent the men to Newgate who were given to you? A. I did.

Tresham Gregg, sworn.—Examined by Mr. SOLICITOR-GENERAL.

Q. You received all these men at the bar from Alderman Tweedy on the 1st of February last? A. I did. (Here he mentioned all their names.)

Q. Under a warrant from the Alderman? A. Yes.

Cross-examined by Mr. RIDGEWAY.

Q. Neither Connor nor Dempsey were delivered to you at the same time with the others? A. They were not.

[Here the papers were offered to be read, but the counsel for the prisoners objecting, that no paper could be read, except such as was actually found upon the possession of one of the prisoners, or satisfactorily connected with one of them, the paper found under the seat was not read.]

[The following paper found by Alderman Tweedy upon one of the prisoners was read.]

"Are you a Christian? I am. By what? By baptism. Who baptised you? St. John. Where? In the river Jordan. What did he call you? To be loyal. To who? To God and my brothers. Are you consecrated? I am. To what? To the National Convention—to quell all nations—to dethrone all Kings, and plant the tree of liberty on our Irish land—whilst the French Defenders will protect

our cause, and the Irish Defenders pull down the British laws. Which is the first T.? The tree of liberty. Who planted it? The Duke of Orleans. Where? In his own lawn. How high are you? Three steps to Paradise. How broad are you? From E. to W. How long are you? From N. to S. Are you astray? No, I am not astray. Where are you going? To the North. What to do? To look for my brother. What is his name? Sarsfield. What is your number? It is five. What is your pass-word? Eliphismatis. How do you stand those times? Upright as well as I can—I am afraid. Don't be afraid. The Duke of York will save you. What do you carry? The Rod of Aaron at command. Who sent you here? Simon Peter. Your coat is dirty. Is it high up? Pretty high up. If you be a friend you will come and clean it. Where did the cock crow when the world heard him? In France. What is your opinion of the weather? It is quite clear; I think the faded flower will blow again."

Mr. M'NALLY.—My lord and gentlemen of the jury, in times like these, after what you have heard, considering myself, what I am in heart and soul, loving and revering the constitution under which I live, I shall not address you without expressing the abhorrence which I feel in my mind from the charge against the prisoners; and I cannot have a doubt, that every man upon the jury, equally abhors a crime, marked by the most infamous cruelty, that can degrade the human heart. A conspiracy to commit a crime can have no palliation from the crime not having been perpetrated, and therefore the impression upon your mind must be the same, as if the murder were actually committed. But, gentlemen, let me warn you against retaining that impression in your mind, when you deliberate upon the case of the prisoners, because it is your duty to wipe away the heinousness of the offence so as not to suffer it to influence your minds beyond the investigation of the evidence which has been adduced. You are not to form a sudden conclusion, because the charge is atrocious. You are to consider this, that if such an offence could have been taken into consideration by ten men, it is equally possible, that two men, such as the witnesses could form a conspiracy to fabricate the charge. They stand in equal situation as to past conduct. A paper is read—to prove what?—that the prisoners are Defenders, The witnesses acknowledge they are Defenders. It appears, that they were considered to be perpetrators in all the enormities, until, as they allege, they took an asylum in the regiment of Artillery.

Gentlemen, I certainly cannot but acknowledge, that one fact sworn to by these men is corroborated—but what is that?—that they were taken in the house of Carmichael. But it does not follow, that they were all acting together as conspirators, and only four or five of the prisoners have been identified by either of the witnesses.

Gentlemen, the credit of the witnesses is with you, for this case depends entirely upon the credit, which you may give them; and when you come to consider upon their credit, though it does not appear, that they come as approvers—that they were apprehended first and came to save themselves from prosecution, yet it appears, that there was a time, when they themselves would have been guilty and were guilty of the very offences, which they impute to others. Gentlemen, witnesses will be produced on one part of some of the

prisoners, to shew that though they were in the house, yet that they are innocent persons.

James White, sworn.—Examined by Mr. GREEN.

Q. Do you recollect the 31st of January last? A. I do.

Q. Were you in the house of Carmichael the evening of that day? A. Soraghan and Reilly were in my company in a part of the room at a distance from the others. Soraghan lodged in the house. He was going home, having disagreed with his master, and wrote a letter to his mother to that effect. We went to look for a vacant seat in the front room, then went into the back room; there were nine or ten men there, and two artillery-men. We went to the first vacancy opposite to them; we had two glasses; Reilly then came in, and sat down and took two glasses of punch. A gentleman came in and gave the first company in charge and no person was let out. We sat contented there, and who the other persons were I knew not; but on the coming of the Alderman, he enquired our names, and he apprehended them as he got their names, and when he had the large company apprehended, and Carmichael, the man of the house, he then turned to Reilly and said, "you will come too, a very good name." The only thing Reilly had about him was a crane-note. He then asked Soraghan his name, "you will come too," said he. With that they marched out of the house, and no more was said that I heard.

Q. Did either of the Artillery-men make any declaration respecting with regard to Reilly or Soraghan? A. I spoke to the gentleman apprehending them and said, "I hoped there was nothing as to them or their company." The Artillery-man rose up and said, "no person was concerned but those who sat with him in the large company."

Cross-examined by the PRIME-SERGEANT.

Q. Soraghan and Reilly lodged at Carmichael's? A. Yes.

Q. What brought you to Carmichael's? A. I was upon my travels home and met the two. Soraghan was at the door.

Q. You met them accidentally? A. I found them there.

Francis Russell sworn.—Examined by Mr. GREEN.

Q. Do you recollect the 31st of January? A. I do, very well.

Q. You were at the house of Carmichael? A. I was.

Q. Do you know Reilly and Soraghan? A. I never saw them before that night; they handed me a glass of punch; they were not of the company who were detected, but when the Alderman came in he desired all to be stopped.

Q. Did you hear either of the Artillery-men make any declaration as to Reilly or Soraghan? A. No; I did not hear.

Q. (By the jury.—What are you? A. I am a constable, and went there that night.

Alderman Alexander called again.

Q. Was there any reason why Reilly and Soraghan were separated? A. They were in a separate box with a woman.

Lord CLONMEL.—There is evidence for the jury as to ten. Gentlemen of the jury, the prisoners stand indicted for that they, on the 31st of January last, did conspire to kill and murder a person of the

name of Hanlon. To support this prosecution Thomas Smith was produced. I shall read over his evidence without any observation, because I shall leave it totally to you. The case turns entirely upon the credit you give the witnesses. [Here his Lordship stated all the evidence.] A paper was produced, manifestly treasonable, every word of it, and it goes to shew you that they were likely to assemble for the purpose of murdering a person who was to prosecute other Defenders, being Defenders themselves. Gentlemen, here the prosecution was rested, and Mr. M'Nally put the case upon fair ground, whether the prisoners or the witnesses were the conspirators? It is a main question for your consideration. If you believe they have sworn false, and that this was a plan of theirs, a scheme to bring innocent persons into crimination, you must acquit them all. But if you believe the testimony of these witnesses, with the evidence of the Aldermen and Gregg as to their identity, you will find them guilty. This is a misdemeanor; I am glad it is, because if the crime had been committed, they must have been tried for murder. Then they produced James White: all that he swore was, that he was present at Carmichael's house. He endeavoured to distinguish, so as to get out Reilly and Soraghan, but the first witness said they had all decided to kill Hanlon—all participated in the intention. This witness said these two were in a seat with him, distant from the other company. The Artillery-men said they were not of the company at first, but afterwards they included them. Very little occurs to me, upon this occasion, to say to you. It is for your consideration. If you believe that these people assembled with the criminal intent charged upon them; that they were brought together for the purpose of forming a scheme to destroy Hanlon, you ought to find them all guilty. If any line of distinction occurs to you with regard to Reilly and Soraghan, you will find accordingly; it does not occur to me. I will leave the case to you, and if you have a reasonable doubt, not such as idle or fanciful men may take up on remote probabilities, but such as cannot satisfy your judgments upon your oaths, then you will acquit. If you have no such doubt, you will find them guilty. I have not dilated upon this case; perhaps the horror of the offence might lead me farther than I ought to go. You are rational men, and you will determine according to your consciences whether you believe these men guilty or not.

The jury retired for about ten minutes, and returned with a verdict finding James Connor and James Dempsey—Not Guilty; but all the other persons named in the indictment, Guilty.

THURSDAY, March 3d 1796.

Both the grand juries were called over.

The prisoners found guilty upon the indictment for the conspiracy were brought up to receive judgment.

Lord CLONMEL addressed the prisoners and said—I trust you will believe me, when I tell you, that I never left this court with more real concern, than I did the first day you were called up here. I saw, as indeed at present, with sorrow and pain, ten decent looking men, above want, with no appearance of distress, with nothing to provoke them—with every reason to hope that they were, and would be, and

had been as useful members of society as any other ten men in the community. Look at them (said his lordship, turning to the grand juries) and see whether you do not participate with me—they have the appearance either of tradesmen or farmers, or of that class of citizens that might well have supported themselves by honest means, carrying on an honest livelihood, and making themselves as respectable as any men, or set of men in the state (turning to the prisoners). You may think then, with what painful distress I heard the offence against you, which the jury believed, notwithstanding every circumstance that might be urged in your favour; because ten of you were tried together, your number would be a circumstance to induce a jury to lean in your favour, if they had not been clear in the evidence against you. You have just heard sentence of death pronounced against a wretched soldier in your presence.* You, every one of you, owe to your prosecutor, Smith, whom you conceive to be a subject of great detestation—you owe to him, that the same sentence which you have heard pronounced upon the soldier, has not been repeated against every one of you, and that you are not the subject of that infamous punishment. You have been charged upon the clearest evidence with conspiring to murder a fellow-creature, who never gave personal offence to any of you. And see under what circumstances you appear—and it is necessary you should know the horror of the offence. This act, from its commencement to the perpetration of it contained no small space of time. I know not what communion you are of—four Sundays intervened upon which you went to religious worship, with this horror upon your minds, and the very day you fixed upon to perpetrate the offence was Sunday, as if you were outraging against God Almighty.

You have had time to make your defence. I will state a few of the leading circumstances of the evidence and with the sanction that the jury have given it by their verdict upon their oaths, and they were all respectable citizens. The case against you was this:—Glennan had a brother-in-law in the gaol of Naas, and he was informed against with ten or eleven other Defenders by the person you had conspired to murder—his name was John Hanlon. While those people were in gaol, Glennan and his wife got hold of Smith, who had been a Defender himself from 1795. That appeared from these circumstances. He swore, that in the presence of several he tendered his information three times at the Castle of Dublin, the first time so early as January, 1795, one whole year before this transaction. He was there examined and gave information against several Defenders, who had sworn to be true to the National Convention—to follow that fugitive traitor, Hamilton Rowan, and also to follow Napper Tandy and two other persons—the sound of the name of one is respectable to my ear, Sir Edward Bellew—the other, Cole, I know nothing of. Smith, with others, was sworn to support Defenders. He was examined two or three times by the confidential servants of government from January, 1795, to April, 1795. Now you all heard and saw what passed in the autumn of 1795. It has been conveyed

* His lordship had a few minutes before passed sentence upon Mulhern, a private in the Donegal Militia, for murder.

to the public through other lips, that is the evidence of Lawler, between whom and Smith it never was pretended there was any knowledge. Hanlon gave information against a set of people who had vowed vengeance against a respectable clergyman, Mr. Walsh, and in order to take away the testimony of Hanlon, one scheme of murder was to follow the other. Glennan had undertaken to lay hold of Smith, who at this time was in the Artillery, to which he had fled, not thinking there was assistance to be had at the Castle at that time. Glennan formed the plan so early as January, 1796, and considered Smith as a proper person to seduce the unhappy man into their power—for that is one part of their execrable system, treason to be executed by murder. The mode was this:—Smith was to deliver Hanlon into their hands, they were to take him along the meadows, and put him to death and throw his body into the river, and Kane said, “as soon as it is fixed I will on the Friday after be able to march 18,000 men into Dublin.” Whether he lied or not, or could do so or not, it is sworn he made the declaration. The import of the oath taken was to serve certain persons, who were named, to recover their estates, sweep clean the Protestants and leave none alive. Which of you made use of this expression constitutes no variation as to the argument—that was the general purport of Defenders—it has been sworn to by great numbers of people. The impression I wish to make is, that this is not an idle tale, but that there is existing, and has been for some time, a horrid system of murder and treason, the seeds of which were sown by such men as Rowan and Tandy, who have fled from their country. I wish that masters of families were more attentive to their children and their families in the early part of their lives. I have endeavoured to save the youth of this town. By two examples I have endeavoured to save the rest.

Masters should have some care that children and apprentices be not brought to the gallows in a hurry. Every master of a family should be accountable for his family, and not suffer them to resort to punch-houses—first letting them get together, then they are infected and made authors of the worst offences. From the 3d of January down to the last day of the month, when this horrid plot was preparing against Hanlon, it appears that Glennan was the person to bring the boys about him. Smith informed Lane, and by well concerted conduct, and the spirit and vigilance of Alderman Alexander, this horrid and infamous scheme was prevented from execution, which might have been perpetrated in half an hour after.

One of the Prisoners.—My lord, there were five of us chandlers had nothing to do with the business—we had come from chapel.

Lord CLONMEL.—Five chandlers together on a Sunday evening in a punch-house! You should have been in your own places. You talk of a chapel, that brings another part of the case into my mind. Let it be recollected, that Hamilton Rowan was, or professed to be, a Protestant. Jackson was a Protestant clergyman, and, therefore, let not an expression of mine be supposed to apply to those of any persuasion. I am in too high a situation to fear any man, or class of men. I thank God, I am in a situation which puts me above politics. I have but one view—to exterminate this evil from the country, if I can.

What you have said, has not suggested any circumstance in your favour. But take it in another point of view. I suppose the persons I have named were professedly of the Protestant religion. What is doing in France? There, Roman Catholics are drowning in hundreds; even their own clergymen are packed together and exterminated. So that religion is made a pretence. "We may begin with Protestants, but the next day we begin upon another class," and so they will proceed to a third, until they destroy each other. Let me go further, and suppose they succeed. If the streets of the city flowed with the blood of Protestants, that would answer no purpose. When the Protestants of this country were fewer and weaker, by thousands, than they are now, they were able to establish themselves, and they never can be borne down but by their own timidity and want of spirit. Would it benefit the Roman Catholics? Certainly not. They have been told so, and the oath is the ceremony which binds wicked hearts together: and if one class of men were destroyed, another would succeed, and every man, having anything to lose, would fall under the knife. Suppose them to succeed in this, and that these associated people were wicked to damnation, if they have any sense of it, would it answer them, if they had destroyed every Roman Catholic of property in the country? No. The country is a great one, and worth fighting for, and if they destroyed every man of property, the country would be conquered again. Therefore, it is a fallacious system.

God and nature have joined England and Ireland together—it is impossible to separate them, and if bands of ruffians started up in every part, they could not hold the dominion of murder for a month. I have seen with pain, that this phrenzy has got among the people of Ireland; and if it be a phrenzy, prisons are their safest mad-houses. What is the situation of Meath? Rich almost beyond any neighbouring county; the farmer happy, the peasantry, yeomen, and gentry all delighted with their situation, because all were independent. How is it altered? Whence is it, that unhappy county has become a sort of slaughter-house? From the practices of some wicked-minded people—who they are I know not—God forgive them. They will fall victims of the law, against which they are struggling. While the countries round are perishing through the horrors of war and famine, Ireland could not say, there was a creature unfed or unprovided for. Why? Because the bad are fed by the good, and the south feeds the disturbers of the north; and if the country had been left to the Defenders, and if it had not been for the industry of the south, there might have been one universal famine. What, then, are these distracted and unhappy people told? But, in truth, I early saw, and spoke of it in acts of my duty, here and elsewhere, that the mischief originated in nests of clubs in the city of Dublin. Dublin is the mint for coining treason and circulating it in small parts, and making it current. A number of young persons, with trades which might make them respectable, not in want, no appearance of it, are become the most active agents. And here I must mention a circumstance—you must feel the weight of it. There never was a time, when persons of your description had less reason to complain. Look at the canals and various public works. Thousands of the poor are employed and supplied with work, even in the time of war. Within

these five or six years past, many persons have looked to the state of the poor, and endeavoured to make them all comfortable and easy ; and yet this is the time in which this phrenzy has seized such numbers. Is this an idle tale ? is it not notorious that cruel and horrid murders have been committed upon witnesses, just at the eve of the commission ? Is it not part of the system spread through the country to destroy witnesses ? Two creatures, because they were witnesses, or supposed to be witnesses, have been brutally murdered, in the dead of the night, at the gate of a man who deserves as well from this country as any other man in it. He who has employed so many of the poor to improve and embellish the most improved place in that part of the country where he resides. Few people are willing to do as much as he did. I have known him to have two military commissions. He quieted the south without a single person falling a sacrifice, and he quieted the west with the thanks of that country. Yet two persons were murdered at his gate, because they were witnesses.

What must be the situation of persons of his description, if the country be made disagreeable to them ? The land will be abandoned by all the proprietors and the tenantry will be left to be worried by tribes of agents and managers :—Their landlords will never see them.

So that taking this subject in every point of view, it is the most wicked system of murder and treason that ever was heard of in any country, that for some years past has disgraced mine own.

A very old author discoursing upon Irishmen, says, “where Irishmen are good, is it impossible to find better, where they are bad, it is impossible to find worse.” I am afraid, we have got to this alternative. Treachery was never the character of Irishmen. Courage and intrepidity were their characteristics. Every creature is taught to fight, but boldly and fairly. But it was not until this system, founded upon the French mode, the total want of all principle, that we began to be disgraced.

I have gone thus far to shew the consequences of this wicked and black system by which you have been seduced, bringing destruction upon yourselves and everything dear to you. I now come to the sentence, which I am obliged to pronounce upon you.

I have received two or three petitions this morning upon this subject. I am bound by the verdict of the jury. It is a calamitous thing to think, that decent persons like you can be seduced. The witness swore that ten were equally acquainted with the intended murder. He acquitted three. But all the rest, he said, were acquainted with the design. I hope the example of this day will operate through the city, and all parts of the kingdom. You must have many relations. I will not wound them by exposing you in the streets ; to send them home with sorrow and shame. For their sakes as well as your own I will not do it.

But you must be punished and therefore each of you is to be imprisoned three years, pay a fine of £50 and give security for your good behaviour for seven years commencing from the expiration of your imprisonment.

INTRODUCTION

TO THE

TRIAL OF FINERTY.

SOME short account of William Orr, is the fittest introduction to the celebrated Trial of Peter Finerty, as the latter was indicted for a libel written on the subject of Orr's fate.

No incident occurred during the eight years which preceded the rebellion of 1798 so full of melancholy interest as the trial and the death of William Orr. It was pregnant with consequences of greater import than usually follow the destruction of a single victim, particularly where he is a man of humble position and of no striking talents.

William Orr was a farmer, of independent circumstances, in the county of Antrim. He was a Presbyterian, and of strict religious principles. His character in every relation of life was of the most exemplary kind. He was a rough, bold man, whose courage, homeliness and warmth won love from all who knew him. In addition to his high moral qualities, his generous charity, his domestic truth and public spirit—he was blessed with a fine figure and a handsome face. Such was one of those whom a bad, immoral government selected for destruction; and succeeded in destroying, by means as foul as ever disgraced the most inhuman tyranny.

The Insurrection Act had passed (Feb. 1796). It punished with death the administering of the United Irishman's oath; and created a number of new crimes theretofore unknown to the law. Its consequences were soon felt. The country swarmed with villains of the most profligate class, swearing away the lives of men and earning the liberal blood-money which profusely flowed from the corrupt fountain-head, at the Castle. It was a crime—the administering of an oath—easy of proof; and the facility with which the sacrifice was effected, and the liberality with which it was paid for, held out irresistible temptations to a class of miscreants that is invariably called into existence by a government that will use and reward the most abandoned perfidy.

William Orr was put upon his trial* on the 18th September 1797, at Carrickfergus, and arraigned on an indictment, framed under the Insurrection Act, for having administered an unlawful oath to a man of the name of Hugh Wheatly, a private soldier in the Fifeshire regiment of Fencibles.

Wheatly swore, That in April, 1796, he had been in Scotland on furlough, and was on his return by Antrim to join his regiment then quartered at Derry. That he then, upon the 24th or 25th of that month, met with several persons who swore him into the brotherhood of United Irishmen, and afterwards took him to the house of the prisoner, whom they found employed in sowing flax in his field. He swore that an assembly was called in the house of the prisoner, who acted as chairman or secretary, which he called a Baronial committee; and that there it was debated, whether he should be entrusted with the printed constitutions of the society, in order to promote the institution among his fellow soldiers. That it was agreed that he should have one. That an oath was thereupon administered to him by the prisoner, which was to keep the secrets of United Irishmen, and not for any reward or punishment to discover of them. The witness threw in many circumstances about arms and a *Northern Star*, which were shown to him, also a draw-well to put the aristocrats into.

He swore that all he did was through fear of his life, which they threatened. That he was told they had armed men enough to get a reform by force, if they could not by fair means; and that if they did not get a reform by fair means, they would overturn the government. He said, that the intention of the society, and consequently of the prisoner, was to assist the French; that it was so explained to him, and that at that meeting it was so determined; and added many circumstances of aggravation, tending to represent the oath and the association as heinously wicked and treasonable. And at same time swore, that the book from which the oath was administered was given to him as his guide.†

A second witness was called (Lindsey, another of the same regiment), who said he was in the room when an oath was administered, but he knew nothing of its nature, whether it was innocent or guilty, lawful or unlawful.

The counsel for the prisoner, Mr. Curran and Mr. Sampson, now insisted, that from the evidence in this case, if the prisoner was guilty of anything it was of high treason—that they believed him innocent of that and every such charge; but in order that that matter might

* There is no correct report of the trial, and it is therefore offered in the shape of a narrative, ample enough to illustrate the trial of Finerty, which sprung from it.

† See account of Orr's Trial, p. 2.

be investigated according to the known law and constitution of the country, the present indictment must be given up, or quashed, and a bill for high treason sent up, otherwise it was in vain that the wisdom of former times, that the experience of ages, and the voice of the wisest and most upright judges hath allowed and sanctioned, the statute 25th Edward III., called by Lord Coke "the blessed statute," as the parliament which enacted it was called *Parliamentum Benedictum*. It was in vain that this excellent statute, never deviated from but for the worst of purposes, and in the worst of times, had given to the accused of treason so many securities against that power ever too likely to be exerted against an individual accused and prosecuted by the crown, for any alleged offence directly against the royal power. Experience had shown how horribly the accusations for high treason had been multiplied by princes, or their ministers—how hard it was for any subject to have a fair trial against whom the angry brow of offended royalty was knit; against whom the public treasure of the nation was lavishly employed; against whom influence, authority and power, open and secret, were hostilely arrayed; when the sheriff might be a dependant on the bounty of the crown, as in times of baseness and oppression usually had been the case, since sheriffs ceased to be elected by the people; who might be induced to select from his county, not the indifferent, the disinterested, and unbiassed, to pass judgment upon their fellow creature's life, but the ignorant, the bigotted, the servile, or the mercenary; who, like the executioner, forgetting that they were sworn to judge of the guilt or innocence of the accused according to the evidence, and make true deliverance between the king and the prisoner, might only await the beckon of authority to do their office. So careful had the law of England been to guard against the various ways by which power might oppress and defence be borne down; against the partiality or frailty of judges, juries, factions and parties, that in England a man to be tried for such an offence as was now attempted to be proved, would, under the 25th Edward III., have a list of his jurors delivered to him in due time, in order to be well prepared to challenge such as he did not think impartial. He would be entitled to thirty-five peremptory challenges, and as many more as he could shew reasonable cause for challenging. He would be entitled to a list of witnesses for a length of time previous to his trial, in order to enable him to sift their character, and if it was bad or vile, to be able to make that important circumstance appear to the jury, so as to set aside such testimony in the whole, or in part, as the case might warrant; and two witnesses, at least, must swear to the same treason before he could be affected. He would also be entitled to a copy of

his indictment five days, at least, before his trial, in order to apprise him of the exact nature of the charge to which he was to apply his defence. And, lastly, he would be allowed by his two counsel to make a defence by observations upon the law and the fact of his case, and to utter fully and boldly whatever might tend to direct the consciences or inform the understandings of his jury as to his intention, which is, in other words, as to his innocence or guilt. For some reason, which might be matter of curiosity, but nothing to the present case—there was less protection and less indulgence to the accused in Ireland; but still there was a great deal in case of treason to make the law esteemed. But see how all these wise and boasted provisions of freedom and glories of the English law will be filched away, if high treason, (for such it is if anything,) specially prosecuted by the crown, out of the stock-purse of the nation, by the king's attorney-general, and other select and able lawyers of the crown, in times so heated, and a situation so critical, that if ever there was occasion for these blessed protections against prejudice and power, it is that time, when so great a part of the community is accused, and secret informers publicly advertised for, if high treason be tried under this Insurrection Act, made hastily on the spur of an unfortunate occasion, and happily if not already expired, shortly about to do so. The prisoner will be tried it is true, and possibly be found guilty; but it will be a finding contrary to the most sacred law, and a violation of that statute which stands now almost singly the glory of our national jurisprudence, and the bulwark of public security. Better it would be to wait until the legislature should repeal or suspend this statute, if they so thought fit, as they had already done the Habeas Corpus Act, than for a court of justice thus directly to do so by trying, under another form, that which if it be anything is high treason. For thus the unfortunate prisoner is deprived of every safeguard, and even of that natural right of the accused, to explain his own intentions and reason upon the nature of the testimony offered against him. Perhaps a few observations by those whose professions have taught them to discriminate between the fictitious and artful relations of a hired informer and the simple tale of truth, might tend to save the life of an innocent and honest man; if so, terrible indeed would be the consequence of the prevention. That peculiarity in our law, that though in cases of the smallest import counsel shall be heard at length, whereas in capital felonies their mouths shall be shut, is reconciled by supposing the judge a counsel for the prisoner; but that was a forced supposition, and against the fact and the nature of mankind. The makers of the wise statutes of treason knew that judges were men in a station greatly exposed to influence, and guarded against their frailties.

They knew that judges, however upright in their intentions, could not take the pains of studying a prisoner's case as he himself or his counsel could; and that in any cause which implied a contention between the higher order of society and the lower, with which they had neither intercourse nor fellow-feeling, it required virtue, sagacity, and magnanimity enough to be merely indifferent. That a most cogent reason for adhering to the good old law, and the exact and precise classification of offences was, that in this very case, though the prisoner was tried and acquitted under this indictment, yet it could not be pleaded in bar without averments dangerous and difficult to an indictment for high treason, which might be supported by the identical testimony, and thus a man might be put twice in jeopardy of his life for the same offence.

Mr. Attorney-General made a very short reply to these arguments; he called upon any man to say in what instance he had prosecuted with any unbecoming rigour; and whether, on the part of the crown, throughout the circuit, the business had not been conducted as mildly and as mercifully as possible. He also made some observations upon what seemed to him an extraordinary motion, where the counsel for the prisoner sought to have their client tried for a deeper and more penal offence than that for which he had been already indicted by the crown. He could not conceive that the gentlemen expected any further benefit from this motion, than that it gave them an opportunity of addressing the passions of the audience.

The Lord-Chief Baron, after hearing both the prisoner's counsel at length, refused the motion, observing that he had heard it patiently, by which it might appear, that the prisoner had no cause to complain of rigour or hardship, although the arguments seemed not so much directed to him, as artfully and ingeniously designed, under the pretence of addressing the court, to affect the minds of the jury and by-standers.*

The prisoner entered upon his defence, and successfully impeached the testimony of the two crown witnesses in the most important particulars; but the Lord Chief-Baron (Lord Avonmore), who appears in this tragedy as no unwilling instrument of blind vindictive law, forcibly charged the jury against the prisoner, and dwelt with inconsiderate and most misplaced zeal on the sufficiency of Wheatly's testimony to induce them to convict. He told them that he was a man of an education above his rank, and that his evidence was of the most satisfactory nature. The jury retired at seven in the evening

* Account of the Trial, p. 4.

and remained in the box until six in the morning. How they spent that frightful interval—in what hellish orgies they passed the night will be presently seen; that they had not altogether drowned the voice of conscience and mercy is very clear from the qualified verdict they felt desirous of giving.

When asked by the Clerk of the Crown if they were agreed, no answer was made for some time—the question being repeated, the foreman, much distressed, answered, “We leave him in your lordship’s mercy—he is in your lordship’s mercy.” On which the judge desired them to return and consider of their verdict. Ten of them only returned, two remaining without. They returned again, and very nearly the same thing was repeated, and it was not till the third time, the foreman still hesitating to pronounce the word “guilty”—Mr. McNaghten, one of the jury, reprimanded the foreman, calling upon him to pronounce the prisoner guilty—upon which the foreman, who was a man in years, and affected even to the loss of speech, handed in the verdict, with a recommendation to mercy, which was taken by the clerk.

The judge promised to lay their recommendation before government, and it was understood by some, that he would represent the case favourably himself. But on the following day he mentioned in court, that he had not pledged himself so to do, but had immediately transmitted by express the recommendation of the jury.

The prisoner heard the verdict without the smallest agitation, and was immediately remanded to gaol.*

Such was the result of this memorable trial, and if the world had heard nothing more of the matter, the name of Orr would, indeed, have been remembered with love by those who knew his virtues—opinion might have assumed his guilt or innocence—but his fate would not have been felt by the whole people as one that demanded vengeance at their hands upon a remorseless, cruel, inhuman government.

On Monday the 18th September, Mr. Curran moved in arrest of judgment, and having relied upon several legal points, he produced to the court the affidavits of three of the jurors, for the purpose of a further motion for a new trial. The Attorney-General expressed his astonishment at the idea of a new trial in capital cases; the affidavits were not permitted to be used, the motion was refused, and the unfortunate William Orr was remanded to gaol.

The following are the affidavits of the jurors.

“Arthur Johnston and Archibald Thompson, two of the jury who

* Account of the trial, p. 13.

were impannelled to try William Orr, depose on the Holy Evangelists, and say, that after they had retired to their jury-room to consider their verdict, two bottles of very strong whiskey spirits were conveyed into their jury-room through the window thereof, and given to and the greater part thereof drank by the said jurors, some of whom became very sick and unwell, which occasioned their vomiting before they gave their verdict. And deponent Thompson says, that he was by age and infirmity, and intimidation used to him by Mr. James M'Naghten, one of said jury, induced to concur in said verdict contrary to his opinion.

" Sworn before me this 20th day of Sept. 1797, in court,

" Arthur Johnston,

" Arch. Thompson,

" YELVERTON."

" George Brooks of Innischaloughlin, in the county of Antrim, farmer, maketh oath and saith that he, this deponent, was one of the jury who was on the trial of William Orr, who was charged with administering oaths. Deponent saith, he was resolved to acquit the said William Orr, but for the representations of some of his fellow-jurors, who informed this deponent, that in case they, the said jury, should return a verdict of guilty, the said William Orr would not be punished with death. Deponent further saith, that if he had at that time known, that the consequence of returning a verdict of guilty on the said William Orr would be his death, he, this deponent, in that case, would not have consented to such a verdict, but would have insisted and persevered in returning a verdict of the said William Orr's not being guilty.

" Sworn before me this 20th day of Sept. 1797, in court,

" George Brooks.

" YELVERTON."

Orr received sentence of death, pronounced by Lord Avonmore, with a show of sensibility which, under all the circumstances of the case, it is very difficult to understand. In the interval between the day of pronouncing the sentence, and the day fixed for its execution (7th of October), various representations, favourable and adverse to Orr, were forwarded to the executive. But there was one which it is almost incredible that any government could have been base enough to neglect, and made by the Rev. G. Macartney, the magistrate who had taken Wheatly's examinations against the prisoner. He procured the depositions of two other clergymen, and laid them, together with his own affidavit, before the Lord Lieutenant. That affidavit

and these depositions are here preserved as monuments, more durable than any brass, of the foul inhumanity of the government, under which our ancestors had the misfortune to live.

*County of } The affidavit of the Rev. George Macartney, Doctor of
Antrim. }* Laws, a magistrate for said county.

Who, being duly sworn and examined on oath, saith, "That he took the depositions of Hugh Wheatly against William Orr, now under sentence of death for administering the United Irishmen's oath to said Wheatly in April, 1796. Examinant further saith, that at spring assizes, in 1797, when it was thought that said Orr's trial would be brought on for said charge, and said Wheatly was desired by Mr. Kemmis and examinant to attend the court; that said Wheatly came to examinant in court, and told him he had something of importance to communicate to him, and on examinant's going out of court with said Wheatly, he said he had seen a Mr. Elder, a clergyman, whom he had seen in April, 1796 (when he was on his way from Antrim to Londonderry to join his regiment), at Rasharkin, a few minutes before walking in the street of Carrickfergus; that he was certain he was brought there to invalidate his testimony against Orr, from a conversation that had passed between him and said Elder, when at Rasharkin in April, 1796, which conversation examinant believes must have been the conversation alluded to in Mr. Elder's affidavit, hereunto subjoined.

"George Macartney.

"Sworn before us at Quarter Sessions, the 3d Oct., 1797,

"RICHARD DOBBS,

"JACKSON CLARKE,

"DOGHERTY GORMAN,

"GEORGE MOORE."

*County of } The affidavit of the Rev. Jas. Elder, Dissenting Minister
Antrim. }* of the parish of Finvoy, in the neighbourhood of
Rasharkin, in said county.

Who, being duly sworn and examined on oath, saith, "That in the month of April, 1796, he was sent for by a Mrs. Huey, who keeps a public-house in Rasharkin aforesaid, to visit a soldier, who appeared to be deranged in his mind. That he immediately went before noon and on his way to the said Mrs. Huey's house, overtook the Rev. Alexander Montgomery (who swore the annexed affidavit before Lord O'Neil), and on being informed that the said soldier had attempted to commit suicide, he told him if he committed that crime, he would put himself out of the reach of divine mercy; and on examinant's praying by him, by his approbation, he seemed more calm, but said that his crimes were of such a nature, that he never could expect to be for-

given. On which, examinant read the parable of the prodigal son, and other passages in the New Testament to said soldier, intimating to him that the greatest sinner might be forgiven, through the mediation of Christ, if he sincerely repented; and on the two soldiers and Mrs. Huey, who had attended prayers, having left the room, and the deranged soldier and the above-named Alexander Montgomery with examinant remaining in the room, he asked who he was, whence he came, and where he was going? On which, he said his name was Wheatly, that he came from Maybole, in Scotland, and was going to Derry to join his regiment, and that his colonel's name was Derham. And on being asked the nature of his crimes, he said that he had been guilty of seducing women in Scotland, which he considered as a great crime, which was a great weight upon his mind. That he went out with a party from Londonderry and seized an unstatutable still, under the direction of a revenue officer; that the party was surrounded by a number of people, who made use of abusive language, on which the party fired on the people, who were in an adjoining field, and that he, Wheatly, ran a man through with his bayonet, which he considered as murder, and which hung heavy on his mind. That the revenue officer was wounded in the affray, and afterwards sent to gaol, where he died of his wounds; and that he, the said Wheatly, was prevailed on to swear against some of the persons who were taken prisoners, a false oath, for which he was afraid they would suffer, which also hung heavy on his mind. Examinant further saith, that he never heard that William Orr was accused of any crime by said Wheatly, until he saw the account of his conviction in the *Belfast News Letter*, nor did he ever hear that a family of the name of Orr resided in the neighbourhood of Antrim, except the family of Mr. Orr, the dissenting minister of Killead, until he saw the account of said William Orr, as a respectable farmer in the neighbourhood being convicted by the testimony of the said Wheatly; nor did examinant, to his knowledge, ever see any of the family of the said Orr, until this morning, the 3d of October instant, when a man, who said he was brother of this said William Orr, came to examinant's house, and requested that he would come with him to Ballymoney, to declare to Mr. Macartney the conversation he had with the said Wheatly at Rasharkin, in April, 1796, with which request he complied out of compassion, having no other interest in the business.

"James Elder.

"Sworn before us, the 3d day of October, 1797,

"RICHARD DOBBS,

"JACKSON CLARK,

"DOGHERTY GORMAN,

"GEORGE MOORE."

County of Antrim. } Alexander Montgomery made oath before me this day,
 " That he was present at Rasharkin when a conversation took place between the Rev. James Elder, of the parish of Finvoy, in said county, and Hugh Wheatly, of the Fifeshire Fencibles, who appeared very uneasy in his mind, and being asked by the said Mr. Elder the cause of his uneasiness, he replied it was from some great crimes which he had committed; on which Mr. Elder asked him the nature of his crimes, when said Wheatly confessed he had been guilty of seduction, murder, and perjury. Examinant further saith, that the time when said conversation passed, was in the month of April, 1796.

" Alex. Montgomery.

" Sworn before me, the 2d day of October, 1797,

" O'NEILL."

A respite was granted till the 10th, and a further one to the 14th of October. Meanwhile memorials were sent to the Lord Lieutenant praying for a pardon—memorials signed by the most respectable gentlemen in the county of Antrim—and demanding the pardon as an act either of mercy, justice, or policy. But it was vain to expect justice or mercy at the Castle; and the policy of government was one irreconcilable with either of those virtues. Accordingly William Orr was executed, amidst the deep and smothered rage of the people, in whose hearts his memory lived, and on whose flags and banners of rebellion his name was afterwards inscribed.

On Saturday morning, the 14th October, he was brought out from the gaol, in which he had consumed the last year of his existence; and though his complexion was somewhat altered from the glow of health which it formerly wore, the more than ordinary comeliness of his countenance still remained. His stature was fully six feet, his person graceful, but extremely athletic, and of those proportions which indicate the greatest degree of bodily activity and strength, but, above all, there was in his aspect a mixture of firmness and sensibility which seemed to shew him gifted by nature with a generous and elevated spirit. The character he had borne amongst his neighbours confirmed this impression, for he was beloved by all; and in the relations of private life, as a father and a husband, his conduct was amiable and exemplary.

When he understood that he was to be indulged in a post-chaise to convey him to the place of execution, being apprehensive that he might have soldiers for his companions, he seemed more desirous to walk, in order to enjoy the company of the two clergymen, Mr. Staveland and Mr. Hill, whom he had requested to attend him; but

these gentlemen being permitted to go with him in the carriage, he arrived at the place of execution about one o'clock, escorted by a very strong military guard, composed of horse, foot, and artillery, detached from different regiments in Belfast and Carrickfergus. At the place of execution the infantry were drawn up in a triangular form round the gallows, on the outside of which the cavalry continued to move, whilst at some little distance two field pieces were planted, ranging with the roads from Carrickfergus and Belfast. But this precaution was unnecessary, as the public seemed rather to shun the spectacle. A few of his particular friends having asked leave to come within the space for the purpose of carrying away his remains, were permitted by the sheriff.*

He distributed various printed papers containing his dying declaration to the people who had come to witness the consummation of his murder, and met his fate with calm intrepidity. It was afterwards said of his conduct, that "in the heathen world less heroic magnanimity would have been deified, and in the early ages of Christianity less divinity would have been canonized." When the rope was about his neck, he appeared for a moment to feel indignant, and said "I am no traitor—I am persecuted for a persecuted country. O God receive my soul. I die in the true faith of a Presbyterian."

The following is his declaration:—

"TO THE PUBLIC.

"MY FRIENDS AND COUNTRYMEN—In the thirty-first year of my life, I have been sentenced to die upon the gallows, and this sentence has been in pursuance of a verdict of twelve men, who should have been indifferently and impartially chosen; how far they have been so, I leave to that country from which they have been chosen, to determine; and how far they have discharged their duty, I leave to their God and to themselves. They have, in pronouncing their verdict, thought proper to recommend me as an object of human mercy; in return, I pray to God, as they have erred, to have mercy upon them. The judge, who condemned me, humanely shed tears in uttering my sentence, but whether he did wisely in so highly commending the wretched informer, who swore away my life, I leave to his own cool reflection, solemnly assuring him and all the world, with my dying breath, that that informer was foresworn. The law under which I suffer, is surely a severe one; may the makers and promoters of it be justified in the integrity of their motives and the purity of their own lives! By that law I am stamped a felon, but my heart disdains the imputation. My comfortable lot and industrious course

* Account of the trial of William Orr, p. 35.

of life best refute the charge of being an adventurer for plunder; but if to have loved my country, to have known its wrongs, to have felt the injuries of the persecuted Catholics, and to have united with them and all other religious persuasions in the most orderly and least sanguinary means of procuring redress: If those be felonies, I am a felon, but not otherwise. Had my counsel (for whose honourable exertions I am indebted) prevailed in their motion to have me tried for high treason, rather than under the Insurrection Law, I should have been entitled then to a full defence, and my actions then would have been better vindicated, but that was refused, and I must now submit to what has passed.

"To the generous protection of my country, I leave a beloved wife, who has been constant and true to me, and whose grief for my fate has already nearly occasioned her death. I leave five living children, who have been my delight—may they love their country as I have done, and die for it, if needful.

"Lastly, a false and ungenerous publication having appeared in a newspaper, stating certain alleged confessions of guilt on my part, and thus striking at my reputation, which is dearer to me than life, I take this solemn method of contradicting that calumny. I was applied to by the High Sheriff and the Rev. William Bristow, sovereign of Belfast, to make a confession of guilt, who used entreaties to that effect;—this I peremptorily refused;—did I think myself guilty, I should be free to confess it, but, on the contrary, I glory in my innocence.

"I trust that all my virtuous countrymen will bear me in their kind remembrance, and continue true and faithful to each other, as I have been to all of them, with this last wish of my heart, nothing doubting of the success of that cause for which I suffer, and hoping for God's merciful forgiveness of such offences as my frail nature may have at any time betrayed me into, I die in peace and charity with all mankind.

WILLIAM ORR."

"Carrickfergus Gaol,

"Oct. 5th, 1797.

N.B.—The above declaration was made and read by William Orr, in the presence of the Rev. Mr. Savage.

Some gross mis-statements having appeared under the name of C. Skiffington, in the *Belfast News Letter*, the brother of the murdered Orr had the following declaration published, which gives the latter further claims to the grateful memory of his countrymen, and adds fresh infamy to the government and its provincial agents:—

"TO THE PUBLIC.

"In consequence of seeing a paragraph in the *Belfast News Letter*, signed C. Skiffington, Esq., High Sheriff of this county, and the Reverend William Bristow, Sovereign of Belfast, relative to the declaration of my unfortunate brother, I am therefore induced, through justice to the character of my brother and myself, to lay the whole of that transaction before the public. A few days after my brother was found guilty and sentenced to die, I went to Belfast and applied to many gentlemen for the purpose of using their interest to have the punishment of my brother mitigated, and in presence of Mr. James Dickey of Randlestown, and Mr. Thomas L. Stewart of Belfast, I applied to Mr. Staples, a member of parliament for this county, and the Honorable William John Skiffington, for the above purpose, who proposed, if I would get a written confession of guilt from my brother, that they would sign a memorial for the purpose of obtaining his pardon; and the Honorable William John Skiffington said, he would go round the gentlemen of the grand jury (who were then mostly all in Belfast) and get the memorial signed by them. In consequence of which, I got a written confession prepared before I left Belfast, and produced it to the Hon., William John Skiffington, and asked him if it was full enough? To which he agreed. I accordingly went to Carrickfergus and applied to my brother to sign the confession, which I produced to him, telling him, if he would sign it, the above gentlemen would sign a memorial to obtain him his pardon, and get the rest of the grand jury to do so. On his reading over the written confession, he declared, he never would consent to sign a paper acknowledging his guilt and the justice of his sentence, as he declared he was not guilty of the crime he was charged with. Not being able to induce him to consent to the above, I left him, and conceiving it would be of very material use, and be the means of saving his life, for this purpose, and through that view, I prepared and signed in his name the confession of guilt, entirely without the privity or consent of my brother, and immediately returned to Belfast, and delivered it to the Hon. William John Skiffington, as the act of my brother, with which, I believe, he went round the above gentlemen in order to obtain their signatures to the memorial, which they refused. This was the whole transaction, being entirely my act, and not that of my brother, as he utterly refused it. And this I am ready to verify upon oath."

"JAMES ORR."

Such was the fate of Orr, and such the desperate wickedness of government. His blood freshened the seeds of revolt deeply sown

in the people's heart. His name was on the pikes in the rebellion which soon followed, and the celebrated proclamation of John Sheares terminated with the emphatic words "Remember Orr."

The consummation of this tragedy was received with indignant fury by the people. The most beautiful and pathetic verses were poured from the press; and the fate of Orr was mourned for even in the capital of England, where Mr. Fox, at a public dinner, gave the memory of the martyr, and where another speaker proposed as a sentiment "that the Irish Cabinet may soon take the place of William Orr."

But the most powerful invective on his fate appeared in the *Press* newspaper, a journal distinguished for its ability and literary merit, in the shape of a letter addressed to the Lord Camden, the cold and crafty tyrant who, as the Lord Lieutenant of the day, may be said to have presided at the sacrifice of William Orr. For the publication of this invective, a criminal information was filed against Mr. Peter Finerty, the printer of the *Press*. The speech of Curran is one of matchless beauty and tenderness; but the days were rapidly approaching when the jury-box ceased to afford a protection to the subject; evidence of the truth of the libel was rejected by the court, and the printer was found guilty.

This very celebrated libel was written by Mr. Deane Swift, who, under the signature of "Marcus," furnished the *Press* with some of its most able and most violent articles. He was son of Theophilus Swift, a barrister of eccentric habits, who was distinguished by his duel with the Duke of Richmond, and who had been imprisoned for a libel on the fellows of Trinity College.* The letter is throughout one of considerable ability; and it will be found set out in full in the trial of Finerty. The closing passage is as follows:—

"We are not Domitian's people; we are not lopped at a blow; but it looks as if some fate had doomed us to be destroyed one by one, as the Persian tyrant ordered the hairs to be plucked from the tail of his beast. Beasts we have been, the vile carriers of the vilest burdens that the vilest masters could lay upon us. But the yoke is shaken—persecution has provoked to love, and united Ireland against foreign despotism.

"Feasting in your Castle, in the midst of your myrmidons and bishops, you have little concerned yourself about the expelled and miserable cottager, whose dwelling, at the moment of your mirth was, in flames; his wife and his daughter then under the violation of some commissioned ravager; his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the hour of carousal. Under intoxicated counsels the

* Madden's *United Irishmen*, 2 vol., 2 series, p. 39.

constitution has reeled to its centre—justice herself is not only blind drunk, but deaf, like Festus, to ‘the words of soberness and truth.’

“My lord, the people of Ireland did hope that mercy would not have been denied to a most worthy and innocent man, when they understood, that one of the worst advisers and most imperious members of your cabinet had abandoned the kingdom. Had he been of your late counsels, the odium might have been divided; at present you have the best claim to it. Let, however, the awful execution of Mr. Orr be a lesson to all unthinking juries; and let them cease to flatter themselves that the soberest recommendation of theirs, and of the presiding judge, can stop the course of carnage which sanguinary, and, I do not fear to say, *unconstitutional laws* have ordered to be loosed—let them remember that, like Macbeth, the servants of the crown have waded so far in blood, that they find it easier to go on than to go back.

“I am, my lord,

“Your Excellency’s humble servant,

“MARCUS.”

For this libel Mr. Peter Finerty, the printer of the *Press*, was tried, and on his trial found guilty. Fletcher and Curran were his counsel, but it was beyond the ability of either to affect the corrupt and packed juries of the day. The trial by jury has been no blessing in Ireland; the government has rarely hesitated to throw its weight into the scale against the fair administration of justice; and a system which ought to be not alone pure but unsuspected, has been rendered, through the agency of corrupt sheriffs, by terrorism and other unrighteous means, an instrument of oppression, as effective as any ever adopted in the worst judicatures in Europe. When we consider the class of jurors which filled the box during the eventful years in which these trials took place—the class of witnesses who paraded their blasted characters and recorded infamy upon the table, and the kind of men who degraded the seat of justice, we are not astonished at the scenes of cruelty, the invariable verdict, and the prompt and bitter sentence which each trial discloses. Prerogative judges have from time to time poisoned the sources of justice in Ireland, and probably they have been the most efficient means of preserving and perpetuating the animosity with which Irishmen regard British influence in this country. For all the constantly recurring judicial breaches of integrity were prompted by corrupt hope; the profligate and partial judge looked to the British cabinet as the liberal purchaser of his infamy, and was ready to work out its objects by the sacrifice of his functions

and the breach of his oath;—and the reward was commensurate with the service. The modern politician in Ireland has good reason to pray that the race may have passed away for ever, and that the liberty which the British constitution is said to give, and of which it is supposed to guarantee the possession, may not be the sport of furious bigots on the bench, or partial jurors in the jury-box.

After the destruction of the *Northern Star*, a celebrated organ of the United Irishmen of Ulster, which had been started in Belfast by Samuel Neilson, which, from 1792 to 1797, was conducted with considerable ability and zeal, the still more celebrated newspaper the *Press*, was established by Arthur O'Connor.

The *Press* appeared for the first time on the 4th of October, 1797, and after a brief and stormy existence, was suppressed like its predecessor the *Northern Star*, by military violence, on the 6th of March, 1798. It was published at 62, Abbey-street, Dublin.* Its proprietor was Arthur O'Connor, its nominal printer was Peter Finerty, and Stockdale was its nominal publisher. The editorial department was, however, conducted by Finerty. Arthur O'Connor, in a letter published in the *Press*, 2d January, 1798, says: "I did set up the *Press*, though in a legal sense I was not its proprietor; nor did I look to any remuneration; and I did so, because from the time that in violation of property in subversion of even the appearance of respect for the laws, and to destroy not only the freedom of the Press but the Press itself, the present members destroyed the *Northern Star*, no paper in Ireland (either from the papers being bought up, or from the dread and horror of being destroyed) would publish an account of the enormities these very ministers were committing."

Several men of great ability were connected with the *Press*. Dr. Drennan, Mr. Deane Swift, Thomas Addis Emmet, Sampson, and John Sheares amongst the rest. Moore was also a contributor.

The government having determined to destroy the paper, and having, moreover, received intimation that a violent letter against Lord Clare was about to be published, the High Sheriff, accompanied by a military force, took possession of a house in Mountrath-street, where the *Press* was printed, and also of the house in Abbey-street where it was published. The letter which brought down the immediate vengeance of Lord Clare was signed "Dion," and written, as Dr. Madden says, by John Sheares. It is a furious phillippic, and might have excited rage in a more moderate and more constitutional government than the Irish rulers of the period. Its threatened publication terminated the existence of the *Press*.

* Madden's *United Irishmen*, 2 vol., 1 series, 37.

T R I A L
OF
MR. PETER FINERTY,
LATE PRINTER OF "THE PRESS,"
FOR A LIBEL.

C O M M I S S I O N
OF OYER AND TERMINER AND GENERAL GAOL DELIVERY,
HELD IN AND FOR THE COUNTY OF THE CITY OF
DUBLIN BEFORE THE HON. JUSTICE DOWNES.

FRIDAY, 22d December, 1797.

Mr. Peter Finerty being put to the bar, the pannel of the petty jury was called—there appeared above one hundred and forty names on it. The following jury was then sworn, after the crown had set aside Mr. Henry Lyons and Mr. George Saul; and Messrs. Robert Law, John Conroy, and John Ferange had objected to themselves, as having been on the grand jury that found the bill against Mr. Finerty :

James Blacker,
Ben. Richardson,
John Dickinson,
Wm. Dickinson,
Wm. Taylor,
Michael Nixon,

James Atkinson,
William Cowan,
Bladen Sweeny,
Mark Bloxam,
Wm. Williams,
James King.

The CLERK of the CROWN then gave Mr. Finerty in charge to the jury upon an indictment stating—"That at a general assizes and general gaol delivery, holden at Carrickfergus, in and for the county of Antrim, on 17th April, 37 King, before the Hon. Mathias Finucane, one of the judges of his majesty's Court of Common Pleas in Ireland, and the Hon. Denis George, one of the barons of his majesty's Court of Exchequer, in Ireland, justices and commissioners assigned to deliver the gaol of our said lord the king, in and for the county of Antrim, of the several prisoners and malefactors therein, one William Orr, late of Farranshane, in said county Antrim, yeoman, was in lawful manner indicted for feloniously administering a certain oath and engagement upon a book to one Hugh Wheatly; which oath and engagement imported to bind the said Hugh Wheatly, who then and there took the same, to be of an association, brotherhood, and

society, formed for seditious purposes; and also for feloniously causing, procuring, and inducing said Hugh Wheatly to take an oath of import last mentioned; and also for feloniously administering to said Hugh Wheatly another oath, importing to bind said Hugh Wheatly not to inform or give evidence against any brother, associate, or confederate of a certain society then and there formed; and also for feloniously causing, procuring, and seducing said Hugh Wheatly to take an oath of said import last mentioned. And afterwards at Carrickfergus aforesaid, before the Right Hon. Barry Lord Yelverton, Lord Chief-Baron of his Majesty's Court of Exchequer in Ireland, and the Hon. Tankerville Chamberlaine, one of his Majesty's Justices of his Court of Chief Place in Ireland, at a general assizes, &c., holden at Carrickfergus aforesaid, in county Antrim aforesaid, Justices and Commissioners of our said Lord the King, assigned to take all the assizes, juries, recognitions, and certificates, before whatsoever justices held or taken; and also assigned to hear, examine, discuss, and determine of all and singular treasons, murders, manslaughters, burnings, unlawful assemblies, felonies, robberies, extortions, oppressions, transgressions, crimes, contempts, offences, evil doings, and causes whatsoever committed within the said county of Antrim; and to deliver the gaol of our said Lord the King, in and for the said county of Antrim. On the 16th day of September, in the 37th King, said William Orr, by the verdict of a certain jury of said county of Antrim, between our said Lord the King and said William Orr, taken of and for the felony aforesaid in due manner, was tried, convicted, and attainted, and for the same was duly executed; and that he, well knowing the premises, but being a wicked and ill-disposed person, and of unquiet conversation and disposition, and devising, and intending to molest and disturb the peace and public tranquillity of this kingdom of Ireland; and to bring and draw the trial aforesaid, and the verdict thereon, for our said Lord the King, against this William Orr given, and the due course of law in that behalf had, as aforesaid, into hatred, contempt, and scandal with all the liege subjects of our said Lord the King; and to persuade, and cause the subjects of our said Lord the King to believe, that the trial aforesaid was unduly had, and that the said William Orr did undeservedly die in manner aforesaid; and that his Excellency John Jeffreys, Earl Camden, the Lord Lieutenant of this kingdom, after the conviction aforesaid, ought to have extended to the said William Orr his Majesty's gracious pardon of the felonies aforesaid; and that in not so extending such pardon, the said Lord Lieutenant had acted inhumanly, wickedly, and unjustly, and in a manner unworthy of the trust which had been committed to him by our said Lord the King in that behalf; and that the said Lord Lieutenant in his government of this kingdom, had acted unjustly, cruelly, and oppressively to his Majesty's subjects therein. And to fulfil and bring to effect his most wicked and detestable devices and intentions aforesaid, on 26th October, 37th of the King, at Mountrath-street aforesaid, city of Dublin aforesaid, falsely, wickedly, maliciously, and seditiously, did print and publish, and cause and procure to be printed and published, in a certain newspaper entitled the *Press*, a certain false, wicked, malicious, and seditious libel, of and concerning the said trial, conviction, attainder, and execution of

the said William Orr, as aforesaid, and of and concerning the said Lord Lieutenant and his government of this kingdom, and his Majesty's Ministers employed by him in his government of this kingdom, according to the tenor and effect following, to wit:—"The death of Mr. Orr (meaning the said execution of the said William Orr) the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws. In perjury, did you not hear, my lord, (meaning the said Lord Lieutenant,) the verdict (meaning the verdict aforesaid) was given? Perjury accompanied with terror, as terror has marked every step of your government (meaning the government of this kingdom aforesaid by the said Lord Lieutenant). Vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough. Against the express law of the land, not only was drink introduced to the jury (meaning the jury aforesaid), but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man (meaning the said execution of the said William Orr) than any that now surrounds you (meaning the said Lord Lieutenant)." And in another part thereof, according to the tenor and effect following, to wit:—"Repentance, which is a slow virtue, hastened however to declare the innocence of the victim (meaning the said William Orr); the mischief (meaning the said conviction of the said William Orr) which perjury had done, truth now stepped forward to repair. Neither was she too late, had humanity formed any part of your counsels (meaning the counsels of the said Lord Lieutenant). Stung with remorse, on the return of reason, part of his jury (meaning the jury aforesaid) solemnly and soberly made oath, that their verdict (meaning the verdict aforesaid) had been given under the unhappy influence of intimidation and drink; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God and to their country for the sin into which they had been seduced." And in another part thereof, according to the tenor and effect following, to wit:—"And though the innocence of the accused (meaning the said William Orr) had even remained doubtful, it was your duty (meaning the duty of the said Lord Lieutenant), my lord, and you (meaning the said Lord Lieutenant) had no exemption from that duty, to have interposed your arm, and saved him (meaning the said William Orr) from the death (meaning the execution aforesaid) that perjury, drunkenness, and reward had prepared for him (meaning the said William Orr). Let not the nation be told that you (meaning the said Lord Lieutenant) are a passive instrument in the hands of others; if passive you be, then is your office a shadow indeed. If an active instrument, as you ought to be, you (meaning the said Lord Lieutenant) did not perform the duty which the laws required of you; you (meaning the said Lord Lieutenant) did not exercise the prerogative of mercy—that mercy which the constitution had entrusted to you (meaning the said Lord Lieutenant) for the safety of the subject, by guarding him from the oppression of wicked men. Innocent it appears he (meaning the said William Orr) was, his blood (meaning the blood of the said William Orr) has been shed, and the precedent indeed is awful." And in another part thereof, according to the tenor and

effect following, to wit :—"But suppose the evidence of Wheatly had been true, what was the offence of Mr. Orr (meaning the said William Orr)? Not that he had taken an oath of blood and extermination—for then he had not suffered; but that he (meaning the said William Orr) had taken an oath of charity and of union, of humanity and of peace, he (meaning the said William Orr) has suffered. Shall we then be told that your government (meaning the government of this kingdom aforesaid by the said Lord Lieutenant) will conciliate public opinion, or that the people will not continue to look for a better." And in another part thereof, according to the tenor and effect following, that is to say—"Is it to be wondered that a successor of Lord Fitzwilliam should sign the death-warrant of Mr. Orr (meaning the said William Orr). Mr. Pitt had learned that a merciful Lord Lieutenant was unsuited to a government of violence. It was no compliment to the native clemency of a Camden that he sent you (meaning the said Lord Lieutenant) into Ireland—and what has been our portion under the change, but massacre and rape, military murders, desolation, and terror." And in another part thereof, according to the tenor and effect here following, that is to say—"Feasting in your castle, in the midst of your myrmidons and bishops, you (meaning the said Lord Lieutenant) have little concerned yourself about the expelled and miserable cottager, whose dwelling at the moment of your mirth was in flames, his wife and his daughter then under the violation of some commissioned ravager, his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the house of carousal. Under intoxicated counsels (meaning the counsels of the said Lord Lieutenant) the constitution has reeled to its centre; justice herself is not only blind drunk but deaf, like Festus, to the words of soberness and truth." And in another part thereof, according to the tenor and effect here following, to wit :—"Let, however, the awful execution of Mr. Orr (meaning the execution aforesaid of the said William Orr) be a lesson to all unthinking juries, and let them cease to flatter themselves that the soberest recommendation of theirs, and of the presiding judge, can stop the course of carnage which sanguinary, and I do not fear to say, unconstitutional laws have ordered to be loosed. Let them remember that, like Macbeth, the servants of the crown have waded so far in blood that they find it easier to go on than to go back, in contempt, &c., and against peace."

There were other counts charging the publication in different ways.

Mr. TOWNSEND opened the indictment on the part of the prosecution, and in an unusual manner, never before done, stated to the jury the whole of the publication as charged against Mr. Finerty.

Mr. ATTORNEY-GENERAL stated the case. He said he had been directed by the executive power to prosecute the traverser at the bar for printing and publishing, and causing to be printed and published, a false, scandalous, malicious, and seditious libel. The grand jury of the city of Dublin had found the bill of indictment, and to that bill the traverser has pleaded not guilty; and it is your duty, gentlemen of the jury, upon the evidence that shall be laid before you this day, and the evidence arising from the libel itself, taking the whole together to determine two questions: one, a question of fact,

whether the traverser at the bar be guilty of publishing that paper called a malicious and seditious libel; and the second question, gentlemen, which you have to decide is, whether the libellous paper itself be a seditious libel or not. That, gentlemen, you will consider upon a careful perusal and examination of the paper; but previous to that examination you are to hear from the learned judge who presides in this court, his opinion upon this paper whether it be a libel or not. And, gentlemen of the jury, I must beg leave to say, that no jury, at least in modern times, have ever been assembled upon an occasion of more importance to the government of the country, than that which now is before you for your consideration. Gentlemen, I am now speaking generally; I shall afterwards go to particulars. It is a libel upon the administration of the justice of the country—a libel that renders the judges in the administration of justice contemptible and odious in the eyes of the people—a libel having such a tendency is the greatest danger that can be brought on a state: the necessary consequences which were intended to be produced, and for which this libel has been published—a purpose that must tend to the total destruction of government and social order in the state. When respect for the administration of justice in a country is gone, every thing is lost—our lives, our properties are in danger. The traverser at the bar is charged with having, on the 26th of October last, printed and published, in the city of Dublin, a newspaper, entitled the *Press*. It would little become me, gentlemen of the jury, to state to you facts not immediately pertaining to the case before you; still less if I was capable of stating anything to you in a case of such vast magnitude as could affect your passions. However, something prefatory I must say of this paper, of which it will appear that the man at the bar is the sole proprietor and printer.

The paper, gentlemen, was published for the first time on the 17th of September in the present year. The law makes it necessary in order to preserve the freedom of the press, to preserve it by restraining its licentiousness; the law has made it necessary, that the man who publishes a newspaper shall make an affidavit that he is the sole publisher of that paper and no other; and of every day's publication a copy shall be delivered at the Stamp-office, signed by him who is the proprietor, and by that means leaves him responsible to any person whom he shall publish against.

On the 17th of September the traverser made an affidavit pursuant to the statute, by which he swore that he was the sole proprietor and publisher of that newspaper called the *Press*, and the law requires that the man who shall so publish such paper, whenever any alteration shall be made in the property and right of publication, a new affidavit of that fact shall be made. I have stated that on the 17th of September the traverser made an affidavit stating that he was the sole proprietor and publisher of that paper, and from that day to the present no other affidavit has been made; and therefore, gentlemen, by the affidavit already made by the traverser at the bar, Peter Finerty appears to be the sole proprietor and printer of that paper called the *Press*.

Gentlemen, this paper appears to be of such a nature as to draw upon it the attention of a government deserving any respect, and of

every man in the state who had any regard to his life, liberty, or property, and the happy constitution under which he is governed. I will not go into the general systematic tendency of the paper. I will make an observation or two on it, merely as to the head of the prosecution now under your consideration. No man who has read that paper, that shall deliberate on the series of papers that have been published in the *Press*, but must say it was calculated to run down the administration of justice in this country—a systematic determination to disgrace the justice of the country in the eyes of the people; to make the lower orders of the people, who are ever and anon clamorous, to rise against the state, and to make them believe that justice and law are curbed in the administration of them, and that they cannot have impartial justice done to them.

I am at liberty to say it does disclose such a system, and the part you are called on to determine is only a part of that system. I will presently state the different parts of the libel, but, before I do it, let me observe to you, that in the discharge of that sacred trust which is now reposed in you, you are to defend the liberty of the press. You will defend that liberty which will preserve the freedom of life and of property. It is the abuse of the freedom of the press that calls on you to defend its liberty. The liberty of the press, gentlemen, can never be destroyed, but by its licentiousness.

The indictment in this case does state some matters of fact, which, the better to enable you to understand, I will read to you.

MR. ATTORNEY-GENERAL then read the opening of the indictment, where it is stated, “that at a general gaol delivery, held at Carrickfergus, on the 17th April,” &c. He then observed to the jury—This part of the indictment, gentlemen, is worth attending to, because it will show that there was a perversion of truth in order to deceive the people. The indictment then goes on and states that Peter Finerty had, as a further object to deceive the people by this seditious libel, wished to insinuate that William Orr ought not to have been convicted, and that he ought to have received his Majesty's pardon, and further to cause it to be believed, that the Lord Lieutenant had acted inhumanly, unjustly, and unworthily the situation he holds, in not having extended to Orr his Majesty's royal clemency. And then, gentlemen, the indictment goes on, and states those parts of the libel which are particularly relied on, and you will have, after the evidence is given, an opportunity of viewing the whole libel. The indictment states particular parts; but in the consideration of the question, it will be your duty to compare it, and see if the whole of the publication has for its object that which the indictment charges it to be.

The paper was published on the 26th October, 1797, of and concerning the trial, attain, and execution of William Orr, and of and concerning the Lord Lieutenant and ministers employed by the King in the government of this kingdom. I forbear to state any of those circumstances that attended the trial of Mr. Orr, because I do not conceive them to be at all necessary to be shown in the present question. You will see, gentlemen, from the libel itself, with what view the publication was made; and it is not for me to state what passed on the trial of that unfortunate man, whose name I would not mention, if it was not made necessary from the nature of the case.

Gentlemen, the libel imports to be a letter written to the Lord Lieutenant soon after the execution of Mr. Orr.

Mr. ATTORNEY-GENERAL read the first paragraph stated in the indictment. Gentlemen, it is impossible to conceive any good motive that could have induced the publication of that. It is not peculiar to any question to be discussed, not expressed in any terms, but such as must excite the people to resentment against the government. If, gentlemen, the ingenuity of the counsel for the traverser can, by force of imagination, put a sense on it, other than the sense of exciting the resentment of the people, let it have full force; but from my understanding, and on the best deliberation, I am not able to find what distinction can be given to this sentence, or that it can mean anything but a general charge against the administration of justice. A charge against that government, to whom his Majesty has committed the care of his subjects in this kingdom; a charge that would disgrace the basest of the base that now hear me, that the Lord Lieutenant and the King's ministers, in order to obtain a sanguinary execution of a man, contrived to have drink introduced into the jury-box, and had a man put to death under colour of law!

Mr. ATTORNEY-GENERAL read the several paragraphs which followed the above one, and observed upon them all.

You find, gentlemen, that the Lord Lieutenant is charged with having withheld the royal mercy, of suffering a man to be executed, after it had appeared to his lordship, from affidavits the most solemn that had ever been made, that the sufferer was innocent.

Gentlemen, mercy is in the discretion of the crown, it must be exercised by the King, or those ministers to whom the executive government is entrusted. The exercise of it is on due deliberation, and a clear examination of the propriety of extending it. For what purpose did the writer of this libel introduce this paragraph, but to hazard the peace of the country? A libeller daring to assert, in the face of the world, that a man whose case was deliberated on, and who had frequent reprieves from execution, that the verdict against that man was obtained by introducing drink into the jury-room, to charge that a verdict had been obtained by reward; can any man in this court dare to think such a charge not libellous? I believe in this, or in Great Britain, since the happy period of the Revolution, no man has dared to insist, or even to think, that a verdict in a criminal case has been obtained by reward and drunkenness; and I do believe in my soul, that he that penned that libel, let him be in what situation of life he may, when he wrote that part, his soul told him he was writing what was false. If it became me to make an appeal, I would appeal to those who were present at the trial, to his friends that surrounded him, and I would ask them, if there was amongst them there a man who believed that that verdict was obtained by reward or fraud. If that is not a libel upon the administration of justice in this kingdom, I know not what it is; and if it is not found to be so, let the scales fall from the hand of justice, and yield up all you have to destruction. If a jury of the country can find that this is not a libel, let all men that wish to be happy, dispose of their properties, and seek protection for their character and their industry in some other country, blessed with a more happy constitution.

Here is a libel of a new species. First, the world is told that he was not guilty of the offence charged upon him, and that he ought not to have suffered; but then, say they, suppose all that has been sworn was true, they then tell the people he suffered for taking an oath of charity, insisting that that brotherhood, to which this case is so nearly related, is a brotherhood of charity, instituted for the benefit of mankind.

Gentlemen, you will observe that the crime is for taking an oath to be of a society formed for seditious purposes; and, gentlemen, the libeller, the author of the libel, tells the people that he suffered death, not for the crime with which he knew he was charged, but for having taken an oath of charity to men!

Gentlemen of the jury, you must see a direct attack upon the administration of the country. Attend to the latter part of the publication as a context to the whole: you see a direct attack on the administration of justice; she is painted as blind drunk, and the people are taught to believe that no attention is paid to justice by the Lord Lieutenant, or those whom he consults in the administration of it.

Gentlemen, here is a direct charge with respect to the trial of Orr: they desire all thinking juries to be cautious how they depend on the recommendation of the presiding judge, leading the people to believe that the jury and the judge had recommended the unfortunate man to mercy, and that mercy had been denied; leading the people to believe that the Lord Lieutenant pays no attention to the recommendation of a judge or jury; recommending to the juror not to find a verdict according to his oath, lest afterwards the prisoner should not be pardoned. It is a wicked doctrine, endeavoured to be spread abroad, that the Lord Lieutenant will not extend mercy where it ought to be extended. It would be too much to say that the Lord Lieutenant ought in all cases extend mercy, even though the judge should recommend: it belongs to the minister to consider well before; for it might appear after that the person recommended was not an object of mercy.

Gentlemen, in this case, the case of Mr. Orr, we must suppose there was much deliberation, for twice was he respited. I will be bold to say, that for one hundred years the crown has never refused to extend mercy to those objects whom the judge on the trial recommended.

Gentlemen, on the whole of this case you will consider whether this paper could be printed with any other view than that charged. The fact of publication will be established by the evidence; I have stated to you that the law requires that a copy of every day's publication should be deposited in the Stamp-office, signed by the proprietor. But it happens that the copy deposited for the 26th October, and that alone, is not to be found in the Stamp-office. How it has gone, by whose contrivance or machinations, it is not for me to observe; but, happily, we shall supply the defect, we shall prove the paper having been bought where the *Press* is published, so that there can be no doubt of the proof of publication. With respect to the libel, to any man of common understanding, that knows anything of the nature of our laws and constitution, he cannot hesitate a moment in finding it to be a libel. If you think him guilty of the fact you will find a verdict

that will have a tendency to establish the liberty of the press, and to restore with full force the administration of justice to the people.

Mr. ATTORNEY-GENERAL then read the opinion of Judge Buller, in the case of the King against Watson; and he then concluded by saying—"I will now produce evidence that will establish the fact of publication; and if it is, as I am instructed it will be, you can have no difficulty in finding the traverser guilty."

Mr. George Hatton sworn.—(An affidavit handed to him.)

Q. Is that your name and handwriting? A. It is.

Q. You are a commissioner of stamps? A. I am.

Q. Was that affidavit sworn before you? A. It was.

Q. By the prisoner at the bar? A. I do not know whether it was or not.

Mr. CURRAN.—Do you swear positively that he (the traverser) made that affidavit?

Court.—Do you swear that affidavit was made before you? A. I do.

Q. By a person calling himself Peter Finerty? A. I asked him if that was his name and hand-writing, and he said it was. The affidavit was then read by Mr. Pollock, the clerk of the crown, dated the 19th of September, 1797, and signed Peter Finerty.

John Kingsborough sworn.—Examined by Mr. TOWNSEND.

Q. Have you any newspaper about you? A. I have. (The witness produced the *Press*.)

Q. Where did you get it? A. I believe I bought it to read it, and gave it my father to read.

Q. What became of that paper after you gave it to your father? A. He returned this paper to me (the one he produced) on Saturday, the 9th of December, as the *Press* I gave to him.

Q. Where did you buy it? A. At No. 4, Church-lane.

Cross-examined by Mr. CURRAN.

Q. Pray, sir, from whom did you buy this paper? A. I do not know.

Q. Was it from a common news-hawker? A. I am positive it was not.

Q. Why? A. Because I went to Church-lane and bought the paper that had that letter from a man in the *Press* office.

Q. You went from mere curiosity to buy one? A. I did, to read for my own amusement; and I do very often buy it for myself.

Q. How soon after you bought it did you give it to your father? A. I believe the evening, for I bought it in the morning as I was going up to the courts, and I think I gave it to him that evening.

Q. Whose office are you in? A. Mr. Kemmis's.

Q. Where was the paper till you lent it to your father? A. In my pocket.

Q. Where is your father?

Mr. ATTORNEY-GENERAL.—You say you went there to buy the paper for your own reading merely? A. I very often did; I bought it as I went to court.

COURT.—Did you buy any other there before? A. I will not take upon me to say that I did; but I bought that for my own reading.

Mr. CURRAN.—Who was by when you bought it? A. I did not see anybody by, but the man in the office who sold it.

Q. Are you not particularly sure it was not the traverser that sold it? A. No, indeed, I am not, but I will not swear it was not; but it might be he.

Mr. ATTORNEY-GENERAL.—Did you inquire at the Stamp-office for that particular paper? A. I did; I was desired by Mr. Kemmis to go to Mr. Lestrangle and Mr. Hatton, to attend him at his house.

Q. Did you get the paper? A. No, I did not.

Q. Did you search for it? A. No; because Mr. Lestrangle told me he had it at home.

Q. Did you ever ask that officer for it? A. No; I never was sent to him for it, nor did I see him relative to it. I was told by Doctor Harvey that Mr. Lestrangle was out of his reason.

Thomas Kingsborough, examined by the SOLICITOR-GENERAL.

Q. Do you recollect at any time getting a paper from your son? A. Yes; and shortly after I put it into my desk.

Q. Who took it out of your desk? A. I did.

Q. Which had been under lock and key? A. Yes.

Q. You kept that key yourself? A. Yes, I did.

Q. I suppose it was put where you locked up other things you kept privately? A. Yes.

Q. Who was the person you gave it to next after you produced it out of the the desk? A. To my son.

Q. Do you recollect a letter signed "Marcus" in it? A. I do, and that was the reason I kept it.

Q. Your son was the next person you gave it to after it had been delivered to you? A. He was.

Question to Mr. John Kinsborough.—Is that the paper your father returned to you? A. It is the identical one which he gave me.

Cross-examined by Mr. M'NALLY.

Q. You read the letter before you put the paper into the desk? A. I did.

Q. And you locked the paper up? A. Yes.

Q. Did you give it to anybody in the house to read? A. I do not recollect that I did.

Q. There are several in the house that might have recourse to it? A. No; I have mostly daughters.

Q. Will you take upon you to say you did not lend it? A. I will not; but I will take upon me to say it was not out of my sight.

Mr. M'NALLY submitted to the court, that by a late act of parliament, entitled "An act for securing the Liberty of the Press," every printer of a newspaper is bound to deposit with the officer of the Stamp-office an exact copy of each and every of such newspaper; that the statute created a superior species of evidence than what was before necessary; it does say that a newspaper shall be filed, and that the paper so filed shall be given in evidence as proof of the publication.

Mr. JUSTICE DOWNES.—Do you mean to contend that there is not evidence to go to the jury?

Mr. M'NALLY.—I mean, my lord, to contend that the best evidence the nature of the case requires is not produced.

Mr. JUSTICE DOWNES.—Mr. M'Nally, I am sure there is no gentleman at the bar will contend that.

Mr. M'NALLY.—My lord, I do not make the objection individually: I act with other gentlemen, and I never start a point without consulting them; and, my lord, it will be contended for.

The CLERK of the CROWN was going to read the publication from the newspaper proved by Mr. John Kingsborough.

Mr. M'NALLY moved that the record might be given to the traverser's counsel to compare with the publication. He said he would assert on this point individually, that it had been the uniform practice on the most material trials for libels in England at which he had been present.

The counsel for the prosecution objected to this; and

The Court desired the deputy Clerk of the Crown to hold the record while Mr. Pollock, Clerk of the Crown, read the publication from the newspaper as follows:—*The Press*, Thursday, October 26, 1797.

TO HIS EXCELLENCY THE LORD LIEUTENANT.

MY LORD—I address your Excellency on a subject as awful and interesting as any that hath engaged the feelings of this suffering country. The oppression of an individual leads to the oppression of every member in the state, as his death, however speciously palliated by forms, may lead to the death of the constitution. Your lordship already anticipates me; and your conscience has told you, that I allude to the circumstance of Mr. Orr, whose case every man has now made his own, by discovering the principle on which Mr. Pitt sent you to execute his orders in Ireland.

The death of Mr. Orr the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws. In perjury, did you not hear, my lord, the verdict was given? Perjury accompanied with terror, as terror has marked every step of your government. Vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough. Against the express law of the land, not only was drink introduced to the jury, but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man than any that now surrounds you. But well may juries think themselves justified in their drunken verdicts, if debauched and drunken judges, swilling spirits on the seat of justice itself, shall set the country so excellent an example.

Repentance, which is a slow virtue, hastened however to declare the innocence of the victim. The mischief which perjury had done, truth now stepped forward to repair; neither was she too late, had humanity formed any part of your counsels. Stung with remorse, on the return of reason, part of his jury solemnly and soberly made oath, that their verdict had been given under the unhappy influence of

intimidation and drink ; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God and to their country for the sin into which they had been seduced.

The informer too, a man it must be owned not much famed for veracity, but stung with the like remorse, deposed that all he had formerly sworn was malicious and untrue, and that from compunction alone he was induced to make a full disclosure of his great and enormous guilt. In this confession the wicked man had no temptation to perjury ; he was not to be paid for that ; he had not in view, like another Judas, the " thirty pieces of silver," if he was to receive his reward, he knew he must not look for it in this world.

Those testimonies were followed by the solemn declaration of the dying man himself ; and the approach of death is not a moment when men are given to deceive both themselves and the world. Good and religious men are not apt, by perjury on their death-beds, to close the gates of heaven against themselves, like those who have no hope. But if these solemn declarations do not deserve regard, then is there no truth in justice ; and though the innocence of the accused had even remained doubtful, it was your duty, my lord, and you had no exemption from that duty, to have interposed your arm, and saved him the death that perjury, drunkenness, and reward had prepared for him.

Let not the nation be told that you are a passive instrument in the hands of others—if passive you be, then is your office a shadow indeed ; if an active instrument, as you ought to be, you did not perform the duty which the laws required of you ; you did not exercise the prerogative of mercy—that mercy which the constitution had entrusted to you for the safety of the subject, by guarding him from the oppression of wicked men. Innocent it appears he was ; his blood has been shed ; and the precedent indeed is awful.

Had Frazer and Ross been found guilty of the murder committed on a harmless and industrious peasant, lay your hand to your heart, my lord, and answer without advisers, would you not have pardoned those ruffians ? After the proof you have given of your mercy, I must suppose your clemency unbounded. Have no Orangemen, convicted on the purest evidence, been at any time pardoned ? Is not their oath of blood connived at ? was not that oath manufactured at the command of power ? and does not power itself discipline those brigands ? But suppose the evidence of Wheatly had been true, what was the offence of Mr. Orr ? not that he had taken an oath of blood and extermination—for then he had not suffered ; but that he had taken an oath of charity and of union, of humanity and of peace, he has suffered. Shall we then be told that your government will conciliate public opinion, or that the people will not continue to look for a better ?

Was the unhappy man respited but to torture him, to insult both justice and the nation, to carry the persecution into the bosom of his wife and children ? Is this the prerogative of mercy ? What would your father have said unto you, had he lived to witness this falling off ? " Son," he would have said, " I am a father, I have a daughter, I have known misfortune ; the world has pitied me, and I am not ungrateful."

Let us explore the causes of this sanguinary destruction of the people. Is it that you are determined to revenge the regret expressed by them at the recall of your predecessor; and, well knowing they will not shed tears at the departure of his successor, that you are resolved to make them weep during your stay? Yes, my lord, I repeat during your stay, for it may not be necessary that a royal yacht, manned and decorated for the purpose, should waft you from the shores of an angered and insulted country.

Another cause. Is it to be wondered that a successor of Lord Fitzwilliam should sign the death-warrant of Mr. Orr? Mr. Pitt had learned that a merciful Lord Lieutenant was unsuited to a government of violence. It was no compliment to the native clemency of a Camden that he sent you into Ireland; and what has been our portion under the change but massacre and rape, military murders, desolation, and terror?

Had you spared Mr. Orr, you thought, perhaps, the numerous families of those whom your administration had devoted, might accuse you of partiality; and thus, to prove your consistency, you are content to be suspected of wanting the only quality this country wishes you to exercise.

But, my lord, it will not do; though your guards, and your soldiers, and your thousands, and your tens of thousands, should conduct innocence to death—it will not do. A voice has cried in the wilderness; and let the deserted streets of Carrickfergus proclaim to all the world, that good men will not be intimidated, and that they are yet more numerous than your soldiers.

We are not Domitian's people, we are not lopped at a blow, but it looks as if some fate had doomed us to be destroyed one by one, as the Persian tyrant ordered the hairs to be plucked from the tail of his beast. Beasts we have been, the vile carriers of the vilest burthens that the vilest masters could lay upon us. But the yoke is shaken, persecution has provoked to love, and united Ireland against foreign despotism.

Feasting in your castle, in the midst of your myrmidons and bishops, you have little concerned yourself about the expelled and miserable cottager, whose dwelling at the moment of your mirth was in flames, his wife and his daughter then under the violation of some commissioned ravager, his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the hour of carousal. Under intoxicated counsels, the constitution has reeled to its centre; justice herself is not only blind drunk, but deaf, like Festus, "to the words of soberness and truth."

My lord, the people of Ireland did hope that mercy would not have been denied to a most worthy and innocent man, when they understood that one of the worst advisers, and most imperious members of your cabinet, had abandoned the kingdom. Had he been of your late counsels, the odium might have been divided; at present you have the best claim to it. Let, however, the awful execution of Mr. Orr be a lesson to all unthinking juries; and let them cease to flatter themselves that the soberest recommendation of theirs, and of the presiding judge, can stop the course of carnage which sanguinary, and I do not fear to say, unconstitutional laws have ordered to be

loosed. Let them remember that, like Macbeth, the servants of the crown have waded so far in blood, that they find it easier to go on, than to go back.

I am, my Lord,
Your Excellency's humble servant,
MARCUS.

Mr. Walter Bourne was then sworn.

Q. Pray, sir, what are you? A. Deputy Clerk of the Crown for the county of Antrim.

Q. Have you the custody of the criminal records of the county? A. I have.

Q. What is that you have in your hand? A. The record of the conviction of William Orr.

Q. The original record? A. Yes, sir.

[The beginning of the record was read by the Clerk of the Crown.]

The case rested on the part of the crown.

Mr. FLETCHER, for the traverser, said, if he was not mistaken, that in point of law, the counsel for the crown had not sufficiently proved their case; however he did not mean to object to their supplying it if they were able. If he understood right, the evidence produced to prove the fact of proprietorship consisted in this. The evidence produced swore that an individual calling himself Peter Finerty came to him and did swear that affidavit which was produced in court. But he did not understand from that evidence that Mr. Finerty, the traverser, was the person that swore that affidavit. To fix the fact of proprietorship upon the traverser, the counsel for the prosecution ought to have gone a step farther. I do conceive, and it has been already suggested, that the best evidence the nature of the case required has not been produced. All that has appeared is, that a man did swear an affidavit purporting that he was the proprietor of the *Press*, and did sign his name, purporting to be the name of "Peter Finerty," but no evidence whatever that he was the traverser at the bar. It ought to have been proved in some manner that the traverser was the person who made the affidavit. If the deficiency can be supplied, I do not care, but I shall sit down to hear the opinion of the court upon it.

Mr. CURRAN said, he trusted that it would not be deemed necessary for him to add to what had been stated. He took it for granted, he said, that there must be some evidence of identity of person. The affidavit that has been read is signed by a person calling himself Peter Finerty, but where is the evidence that he was the traverser at the bar? You see that the intent of the evidence is to show, that he is the proprietor of the house in Church-lane. His declaration of that matter would be easily given in evidence. Suppose an individual man came to the Stamp-office, and said his name was Peter Finerty, that he lived in Church-lane, and was proprietor of the *Press*; why a thousand different persons might say the same thing, and there not be a syllable of truth in the whole of it. There must be laid before the jury evidence sufficient to satisfy them that the traverser at the bar is the person who made that identical declaration.

Mr. ATTORNEY-GENERAL.—It strikes me there is sufficient evidence to go to the jury.

Q. By the Jury, to Mr. Hatton.—Will you swear the traverser at the bar is not the person that made the affidavit? A. I believe he is the man; he was dressed in a green coat, and seemed as if he came from the printing business. It was rather dark when I took the affidavit.

Q. Could any other affidavit have been made without your knowledge? A. There might, but not on that day.

Mr. CURRAN.—The act expressly says that such affidavit shall be evidence against the person who makes it.

A considerable delay followed, in consequence of the prosecutors having sent for Mr. SIRR, who had taken the traverser into custody; at length Mr. SIRR appeared and was sworn.

Q. Do you know Mr. Finerty the traverser? A. I do.

Q. Point him out? (Mr. SIRR identified him.)

Q. Do you recollect having arrested him? A. I do.

Q. On what day, as near as you can recollect, or what month? A. It was during the last commission.

Q. Where did you arrest Peter Finerty the traverser? A. In an office, called the *Press* office, in Church-lane.

Q. What number? A. Number 4.

Q. Had you any conversation with him at that time? A. I had.

Q. Be so good as to state what that conversation was? A. I asked him if his name was Finerty?

Mr. CURRAN.—I trust the counsel for the prosecution will have the candour to apprize the counsel for the traverser what kind of evidence they are going to give.

Mr. TOWNSEND.—I am going to show declarations of the traverser.

Mr. CURRAN (to the witness).—Was the traverser induced, by any hopes or fears, to say anything?

This question was objected to by the counsel for the crown.

Mr. McNALLY mentioned the case of Paine, in 5 Mod. Reports; where it was ruled, that evidence of conversation of a prisoner should be given, as well what he said in his own behalf, as what made against him.

The counsel for the crown were desired to proceed by the court.

Mr. TOWNSEND (to the witness).—You will be kind enough to tell what the conversation you had with the traverser was? A. I asked him if his name was Finerty, and whether he was the publisher of the *Press*, and he told me he was.

Q. Is that the man there (pointing to the traverser)? A. That is the gentleman.

Cross-examined by Mr. SAMPSON.

Q. Who was present at the conversation? A. I believe three or four.

Q. Can you name them? A. There was one I would know, if I saw him; but I do not know his name.

Q. Did you ask the traverser if he was the person who signed the affidavit? A. I know nothing of the affidavit.

Q. Did you say he acknowledged the publication of the letter signed "Marcus?" A. I did not.

Q. Was there any friend of yours there? A. There was; but I did not know it, till I saw him in the office.

Q. Had you a warrant to arrest him? A. I had.

Q. And you went singly? A. No; there was a man with me.

Q. What was his name? A. Mitchell.

Q. Where does he live? A. In Ship-street.

Q. What is his business? A. I do not know.

Q. How did you happen to know him, and not his business? A. I knew him to be an evidence for the crown.

Q. Was it before or after the publication that you arrested him? A. I should imagine after; it was during the last commission.

Q. What did you do with him when you took him? A. I took him to the Castle guard-house, and had him escorted to Newgate.

Q. You, sir, are also zealous, I understand, for the liberty of the press, and the suppression of its licentiousness—are you the gentleman that chased the carrier of the *Press*, in the night time, with a drawn sword?

Mr Justice DOWNES.—What! ask a man if he pursued another with a drawn sword! I do not think you have a right to ask it.

Mr. SAMPSON.—My lord, I surely have a right to ask it. If the witness was doing his duty, he might do so; if he was committing an offence, he need not acquiesce. If he has not a mind to answer, let him be silent.

Mr. SIRE.—I did not.

Q. Did you see any person stop the carrier in the public street? A. I did not.

Q. Pray, sir, do you know of Mr. Finerty's being taken out of the gaol to the house of an alderman one night? A. I do not; I was not present.

Q. Do you know is the *Press* in the pay of the government, or the treasury? A. I should suppose not.

Q. Do you not know there are other papers in the pay of the treasury?

Mr Justice DOWNES.—I do not think that question material to the point.

Mr. CURRAN.—My lord, it strikes me it is material in this point of view. This is a prosecution carried on in the name of the state, for a libel on the executive government; and it may therefore be necessary for the jury to know that the government have papers in pay to panegyricize them.

Mr. TOWNSEND.—The conduct of government certainly is not the subject of the present question.

Mr. CURRAN.—Yes it is; and may be the very ground of defence.

Mr. Justice DOWNES (to Mr. Sampson).—What question do you put?

Mr. SAMPSON.—My lord, they are many; all necessary to let the jury judge of the degree of malice and guilt of this particular charge. The first question I would put is, whether the witness knows what papers are paid by the government?

Mr. TOWNSEND.—I beg leave to object to that.

Mr. CURRAN.—We contend for it on this ground: the conduct of government has been stated to be abused by this publication; and the conduct of government may be part of our defence.

Mr. Justice DOWNES.—I do not know that the court sits to enquire into the conduct of government.

Mr. ATTORNEY-GENERAL.—I do object to that question; I came by the desire of the government to prosecute for this libel, to which the defendant at the bar has pleaded not guilty, and they now desire to go into evidence that the ministers of the crown have done something wrong, to justify what has been done by the prisoner. I do object to it altogether.

Mr. SAMPSON.—I believe there is one rule of law and evidence for the crown and the subject, and God forbid it should be otherwise; that nothing shall be stated but what is intended to be proved, or is material to the cause of the party stating it. The *Press* has been stated to be part of a system of sedition and of provocation, and the jury have been prepared to hear much evidence on that ground; but I trust we do not live in a country where the people are to submit to every abuse without even daring to complain, where the Press is to be licentious on the one side, and put down by military force on the other—it is well to recollect at times that the doctrine of passive obedience and non-resistance is treason in our law, and remonstrance is not, and that extreme provocation is always some excuse for the warmth of expostulation.

Mr. Justice DOWNES.—To the point, sir, if you please.

Mr. SAMPSON.—The point is this; it was stated that the *Press* was part of a system of licentiousness, and I am about to shew that there are papers that say what they please on one side; and if I can I will prove that this is part of no other system than that of repelling argument by argument, assertion by assertion, invective by invective, and that at a time when they have 100,000 armed men on the opposite side of the question, and this nothing for its defence but paper shot. I wish to know if I may ask the witness whether he knows of other papers, in the pay of government?

Mr. Justice DOWNES.—That is the question I have already said is not relevant to the case; therefore it shall not be asked.

Mr. SAMPSON.—Did you ever hear of the *Northern Star* being put down by soldiers? A. I have heard of it.

Mr. Justice DOWNES.—I do not conceive that question to be more material.

Mr. FLETCHER.—We beg to be set right if we are wrong; but we suppose passive obedience and non-resistance is treason in our law, and remonstrance is not; and that extreme provocation is always some excuse for the warmth of expostulation. We are to defend our client for publishing a false, malicious, and seditious libel; we suppose the malice is deducible from the falsehood. It is stated to be a malicious libel against the government of the country, and part of a system to bring the administration of justice into contempt, and to dissolve the government. That we conceive to be the question before the jury, and therefore whether it is a libel or not; and in order to shew that is a libel, it must be shewn that the publication was published falsely and maliciously, and therefore we do conceive we have

a right to shew that it is not a false and malicious libel. In the case of murder would it not be evidence to shew every anterior circumstance, to shew the acts of the party killed having tended to the provocation? Does not the malice arise from the falsity of the charge? Would it not be evidence to shew, that one party struck, and the other repelled. Is not that evidence to go to the jury? Therefore if we should give evidence to shew that when this publication was written, it was under an idea of the truth of the facts, not thinking them to have been false, would not that go to the jury as evidence of the intention.

Mr. Justice DOWNES.—I do not conceive it at all material to the question before the jury.

Mr. SAMPSON (to Mr. SIRR).—Did you at any time seize upon a parcel of those papers, entitled the *Press*?

Mr. SIRR objected to answer the question, if he was not obliged.

Mr. Justice DOWNES.—You are not obliged to answer that question.

Mr. SAMPSON.—If it will criminate you, sir, if you see that you are in danger by answering, I will not persist, otherwise you will answer it certainly.

Mr. SIRR.—I will not answer it.

Mr. SAMPSON.—Did you attend Mr. Finerty the night he was taken out of the prison, and carried before the Alderman? A. I know nothing about it.

Q. What office do you hold? A. I am deputy town-major.

Q. Are you a magistrate? A. No further.

Mr. CURRAN.—I hope your lordship will be of opinion that the counsel for the prosecution have not established the case, and that it, therefore, will not be necessary for the counsel for the traverser to state any case, and that the prosecutors having been admitted to the indulgence of strengthening their evidence once, by calling Mr. SIRR, that they will not be indulged again. It does not appear that any charge has been sufficiently proved to make evidence to go to the jury; the evidence only goes to this, Mr. Hatton swore that he took an affidavit of somebody who signed the affidavit, and that it was dark; he did not undertake to swear to the person of any man, as having made that affidavit; therefore as the evidence does rest there, namely, that there was an affidavit sworn before him by somebody calling himself Finerty, now the question is, whether the want of proof of the identity of the person who so swore the affidavit has been supplied or not? I say not, because they could not by law be admitted to go into the evidence they have endeavoured to give.

It has been stated by the crown, that there was an affidavit made by the traverser, which affidavit has been produced in court; and that affidavit is the only evidence they could give; according to the law they ought not to have travelled out of it; here is a written evidence put upon the record of the county. The evidence can only be supported by proving that the traverser was the person who swore that affidavit, and that proof could only have been made by the person before whom the affidavit was made.

Mr. Justice DOWNES.—By the traverser's admission it may be proved.

Mr. CURRAN.—I would not controvert that, but I say, in support of

the position laid down, when the observation was made, that there is written evidence that must be given, and no secondary evidence can be received. I take it to be the law, that where evidence is stated to be on written paper, that that written evidence must alone be resorted to, unless it be proved to be destroyed. Suppose a bond in court, could anything but that bond be let to go to the jury, proved as it may be? But could you receive evidence that the party did acknowledge that he had signed the bond? It certainly could not be done. There are a variety of ways in which that affidavit may be proved; but I do take it to be a rule of law, that the mere declaration of the party cannot be received in a court of justice.

Mr. Justice DOWNES.—Do you say there is no admissible proof of a publication in a newspaper; and that the affidavit is the only positive proof the law allows? I think it may be proved by more ways than one, as a debt may be due by more ways than by bond.

Mr. CURRAN.—What is the evidence of Sirr? That he went to the *Press* office, that he arrested a man there? But I do not rest my objection on one man going to arrest another, taking him by the throat; and that under the terror of such usage he said he was the printer and publisher of the paper in question that contained the libel; that he was, at the time he was taken, the printer and publisher of that paper; but is there any proof that he knew of the publication before it appeared, or that he was the printer of the paper at the time of that publication? Is this to go to the jury? There is evidence he was the printer on Saturday, therefore he must be the printer on Monday! Suppose a week before, suppose a month before, can the jury find that because, perhaps through terror, he said he was the printer on the Saturday, that he must have been the printer a month before. In the case of Rabb, printer of the *Northern Star*—that was a publication in a paper that is now dead. I remember the objection allowed by the court was, that the affidavit did state that Rabb was proprietor of the paper at the time of his making the affidavit before the proper officer; but it did not appear in evidence that he was proprietor of the paper at the time of the publication of the libel, and the court allowed the objection.

Mr. Justice DOWNES.—The judges were afterwards of opinion that the objection ought not to have been allowed, and I think the court were wrong in not allowing the proof to be sufficient, on this ground, that Rabb had continued to be printer till the time of publication.

Mr. CURRAN submitted, that from what he had said, he trusted the court would be of opinion, there was not evidence to go to the jury.

Mr. ATTORNEY-GENERAL.—Mr. Curran has stated facts that do not arise on the case at all; the question must go to the jury, and I am convinced there is sufficient evidence to go to the jury, and that there is sufficient evidence to convict the traverser. The question is not whether he made that affidavit produced from the Stamp Office, the question is, whether he be the publisher of the libel or not? There is sufficient evidence to the jury that the traverser was the publisher, at the place stated in the affidavit, that is, No. 4, Church-lane.

Mr. Justice DOWNES.—I do think there is evidence, that it was

printed at No. 4, Church-lane, and Mr. Sirr has said that he went to that house, and found the traverser there, who said his name was Peter Finerty, and that he was the printer of the *Press*. I think there is evidence to go to the jury.

Q. Juror (to Mr. Hatton).—Was there any other person registered as proprietor of that paper but the man who made the affidavit? A. No; there was not.

Q. Could there be any other without your knowledge? A. No; there could not.

Q. Mr. FLETCHER (for the traverser).—Are there not other Commissioners of Stamps? A. There are four.

Q. Might not the affidavit have been taken by them? A. It is not likely on that day; I do believe it was the traverser at the bar that made the affidavit.

Q. Mr. Justice DOWNES.—If there had been any other made would it have appeared on that paper you have? A. No; it would not.

Q. By a Juror.—If the property had been changed would there not have been another affidavit? A. There ought to be another sworn.

Mr. J. SHEARES (for the traverser).—If they give up the affidavit, they must give some other thing in evidence to support their case.

Mr. ATTORNEY-GENERAL.—We give up nothing; we rest here on the part of the crown.

Mr. FLETCHER (for the traverser) began by saying that he did not know he would have any duty to discharge in the present case. It was late on the night before when he found his brief lying on his table, and when he saw on the back of it the two respectable names of Mr. Curran and Mr. Ponsonby, who had precedence of him, he did not expect he would have had more to do than, with the other counsel, merely to have examined the witnesses. He mentioned this to the court and the jury that if he should not appear to be arranged in what he was going to state that he might not be charged with inattention. The traverser, he said, stood charged with having printed and published, and having caused to be printed and published a false, scandalous, and seditious libel. To establish the guilt upon the traverser, there were two things of which the jury should be convinced; and they were called on to discharge a most awful and solemn duty; they must be convinced of two substantial and material facts, of any of which, if they had any the least hesitation, they were bound by everything that was sacred to acquit the traverser. The first point they had to decide was, whether he did print and publish the paper in question, stated to be a false, seditious, and malicious libel, and they must have fully satisfied their minds upon that point, before they were called upon to entertain the second, and then they must consider whether the paper in question is a false, seditious, and malicious libel or not?

With respect to the preliminary point, whether he did publish the paper in question, the jury had heard much said, and urged by the counsel for the prosecution to induce the court to be of that opinion. The counsel for the traverser did conceive that there was not sufficient evidence to go to the jury, for them to exercise their duty upon; but the disposal of that question by the court did not preclude the jury from exercising their judgment. The court was not called upon to

give an opinion, and all the court did do was to decide that there was sufficient evidence for the jury to exercise their discretion upon, from the circumstances sworn to; therefore, the jury ought to be convinced, beyond a shadow of doubt, that the traverser at the bar was the publisher of that paper, stated to be a false, malicious, and seditious libel.

He besought the jury to advert to the evidence which had been given, and if it did not flash conviction to their minds the judge would tell them it was the boast of the criminal code of this country, that where there was a doubt, there was an imperious call upon them to acquit. He trusted the jury would exercise that reason with which they were endowed; for by the verdict they should give, must his client stand or fall. They were, therefore, called on to exercise with calmness, and divested of passion, as far as human minds are capable of being divested, that discretion with which they had been intrusted by the law.

The evidence which had been laid before the jury amounted to this: an affidavit is stated, purporting to have been sworn by a man who passed for Peter Finerty—that has been proved; but as to any identity of the traverser at the bar being the person who made the affidavit, there is not the smallest evidence. His hand-writing has not been proved. There has not been a tittle of evidence of either of these facts, of his identity, or of his hand-writing; and, to a demonstration, no man of reason could draw that conclusion, that the traverser was the identical person that made the affidavit. That the proprietorship of the paper was in the traverser, there was not an iota of evidence. What is the other evidence to support this? A young gentleman (Mr. Kingsborough, clerk to the Crown-Solicitor,) bought a paper containing that letter or writing signed "Marcus," and which is charged as the libel, for his own amusement; and you are told that he bought it at a certain house; that he gave it afterwards to his father to read; that his father put it by after he had read it; and that he afterwards returned it to his son; and upon that evidence are the jury called upon to decide that the traverser was guilty of having published that paper called a libel. What is the evidence of the fact? That Mr. Kingsborough bought the paper at a certain house; not seeing the traverser there; not buying the paper from him, having no communication whatever with him. When the jury coupled these together, when they recollect that there was a legislative interference, namely, the necessity imposed upon printers by the stamp act of furnishing a paper to the stamp office, which should be lodged there; when they recollected that the paper, and the only paper missing, was the identical one in which this libel is charged to have been printed, is not produced on this occasion, it is a conclusive argument that there is something singular in the case. What has become of that paper? Where has it gone to? If it was lodged it must have been brought forward, and it then might appear that the traverser did not authenticate it. I put the non-production of it on the prosecutors if it was lodged; and by the non-production of that paper, there begets a reasonable suspicion that if it was produced, it would appear to have been authenticated by some other signature, and not to have been the traverser's. The non-production of it makes the prosecution weaker

than if no act of parliament had passed, because if it had been produced the production of it might have established the contrary of the fact, and would have shewn that the traverser was not the man that had authenticated it with his name.

Mr. FLETCHER continued, and said he had gone through two stages resorted to by the prosecution; and after a considerable pause had been, in which the court waited to enable the counsel for the crown to make out the evidence if it could be done, and then a witness is produced who stated that the traverser acknowledged to him that he was the publisher of the paper; that point had been much argued, but if the jury were not convinced as reasonable, honest, and conscientious men, having no doubt on their minds; that the traverser did really publish the paper in question if they doubted; if they hesitated on the question, it was their duty, by the spirit of the criminal law, to acquit the traverser. But if contrary to his opinion, and which he should never believe the jury could, unless they had some private evidence not disclosed, any man in the box having such internal private evidence, ought to come forward and offer himself to be examined in court as to whatever fact he might be in possession of. If any of the jury was in possession of any such evidence it was not then too late for him to offer himself, and come forward to be examined.

Having touched upon the first question for the consideration of the jury, he would now go to the second part of the case; whether the paper was a seditious, false, and malicious paper or not. In discharge of that province which was assigned to the jury, he said they were the sole judges of the law as well as the fact. As to the question whether the writing was a false and seditious one, he would tell the jury that antecedently to some years back, for it was but a few years since the old common law was restored in both countries, juries had been told for more than half a century that as to the fact of falsehood and malice they had nothing to do, that they had merely to find the fact of the publication; that doctrine has gone to sleep, and peace be with it. When a paper was written against an individual it was stated to be malicious; if the government was attacked, "seditious" was added by implication of law. Mr. Attorney-General has stated to the jury the trial and conviction of a person of whom the jury must have all heard (Mr. Orr). It was stated that the conviction of that unfortunate man had been obtained by the perjury of the witness who prosecuted him, but it was not charged by whom the perjury was procured. It does not appear whether perjury was discovered before the trial or after, and (says Mr. Fletcher) I have a right to suppose that the circumstances were not disclosed at the trial. He would therefore take it for granted that there did not appear to the learned judge who presided at the trial of Mr. Orr any circumstances that could call on him to state to the jury his doubts, if he had any, as to the credit of the witness. Mr. Fletcher said he would take it in the most offensive way against the traverser, and put it to the jury if these facts, which have been stated, did appear after the trial, if it was a false and malicious libel to ground their verdict of guilty; it had been stated to them that conviction followed the trial. But what followed that? Certain of Mr. Orr's jury did come forward and state upon their oaths, that drink

had been introduced into the jury-room to influence that verdict which ought to have been given in sobriety and reason. If the fact be as stated by those jurors, if by weakness of mind produced by liquor, and influenced by the rest of the jury, if these be the facts, as I am instructed to say they are, what will the jury upon their oaths say, that the publication of those facts were a false and malicious libel? What shall I say to that government that would not interpose its power and save the victim from destruction? No charge against the administration of justice in the country can by any fair deduction be elucidated from the words stated, all that can be extracted from it is, that the verdict was obtained by perjury; if that be true, it establishes this, namely, that it was procured in a manner that it ought not to have been obtained. Suppose the witness had not sworn true, suppose the verdict had been obtained by intimidation, and introduction of drink into the jury-box, suppose all this to have been stated, suppose you would be induced to believe that the verdict had been obtained by perjury, seconded by drunkenness; I ask you, gentlemen of the jury, what would be the feeling of any honest man, supposing the facts true, can human nature furnish words black enough to apply to such a conviction, what would be the opinion of any honest man when he heard of such a conviction? This prosecution is stated to be in vindication of the government of this country. I stand forth in endeavouring to convince you that an honest indignation has a right to observe upon those actions it conceives to be bad. Do you imagine, gentlemen of the jury, that I would stand forward the advocate for the licentiousness of the Press? God forbid any person should think I would not stand up the advocate for the insulted laws of my country. Do you conceive the justice of the country implicated in it? God forbid. What is the freedom you were told you were called upon to defend? Does it consist in investigating the faults of the Press? No; it is its licentiousness you are to curb. You have been told it is the most flagitious of all libels. The question for you to decide is, is it false? I hold in my hand a letter for printing which the printer was prosecuted in England—I mean the letter of the celebrated Junius to the King. Hear the words of that libel: "The people of England are loyal to the house of Hanover, not from a vain preference of one family to another, but from a conviction that the establishment of that family was necessary to the support of their civil and religious liberties. This, Sir, is a principle of allegiance equally solid and rational, fit for Englishmen to adopt, and well worthy of your Majesty's encouragement; we cannot long be deluded by nominal distinctions. The name of Stuart by itself is only contemptible; armed with the sovereign authority their principles are formidable. The prince who imitates their conduct should be warned by their example; and while he plumes himself upon the security of his title to the crown, should remember that, as it was acquired by one revolution it may be lost by another."

"The people of Ireland have been uniformly plundered and oppressed; in return they give you every day fresh marks of their resentment. They despise the miserable governor you have sent them, because he is a creature of Lord Bute; nor is it from any natural confusion in their ideas, that they are so ready to confound the original of a king with the disgraceful presentation of him."

The printer of that letter was prosecuted for publishing it, and an English jury would only find him guilty of the fact of publishing, but they would not convict him of having published it with a seditious or malicious intent.

Mr. FLETCHER continued to argue, at considerable length, on the discrimination of English juries, and the unbounded liberty of the English subject to animadvert upon every public topic. It was true, he said, that the publication in question was harsh and rude, and far from that pleasing two-edged sword of Junius. If, said he, gentlemen of the jury, you shall, after what I have said and read to you, be convinced that the publication in question was published with that malicious and seditious intention imputed to it by the indictment, find him guilty; if I were satisfied of the fact, I would be the first to desire you to do so.

Mr. FLETCHER then observed upon the abuse which had been given to the character of Lord Moira, in the papers of this country, to an offspring of the soil of Ireland. Had he not bled in the cause of England and of Ireland? Is the freedom of the Press to consist merely in panegyrising the measures of the government, let them be right or wrong? If that be the freedom of the Press, he had no idea of such a liberty of the Press. That is not the liberty of the Press that put down ship-money; that is not the liberty of the Press that brought the present King to the throne; that was not the liberty of the Press that produced the Revolution. In the case of the dispensing powers, what do the seven bishops not owe to the liberty of the Press? That was not the liberty of the Press that forced the house of Stuart from the throne. The liberty of the Press does not consist in panegyrising the government of the country, or in libelling individuals. But if a fact of the kind stated in a publication, and we shall have evidence to convince you of it, and to induce you to believe that by the publication of that fact the freedom of the Press was well exerted, will you say it is false and malicious?

It has been suggested to me that the prosecution is carried on to vindicate the ways of Mr. Pitt to this country. Marvellous indeed! The publication states that there are burnings and rapine, and desolation in the land. I conjure you to lay your hands to your hearts, as God shall deal with you, and I ask you is there desolation and burnings in the country? If you do say that there are, and it has been stated in England by that character whose least boast is his descent from the Plantagenets, I mean Lord Moira; he offered to prove at the bar of the English House of Lords; and I hope he will come here and make the same offer, facts within his own knowledge. Have you heard of that offer? If you have not, there is not a man about you but has. Will you then be warranted to say, on your oaths, that the traverser printed this publication in the malignity of his heart? Have any of you travelled through the country? Have you observed the situation of it? If you have, and find that the traverser has misrepresented every circumstance, find him guilty.

Mr. Fletcher concluded, by requesting the jury to look to the conduct of the English jurors, in the cases of Horne Tooke, and Thelwall; where, though they acquitted them, after long and heavy trials, the verdicts gave satisfaction. He conjured the jury to weigh well the

intention of the traverser; if they were satisfied that he did publish the letter in question; and if, after the evidence that would be adduced, they should be of opinion that the traverser did publish those facts (most of which Lord Moira had offered to verify at the bar of the English House of Lords) falsely, and with the malicious and seditious purpose laid in the indictment, that then, and in that case only, could they be warranted to find the traverser guilty.

The Right Hon. Lord Yelverton.—Examined by Mr. SAMPSON.

Q. I beg of your lordship to look at that writing (a paper produced to his lordship). A. I believe the name subscribed to it is mine.

Q. Did not your lordship try William Orr? A. I did.

Q. Did your lordship transmit the recommendation of the jury?
A. I did.

Q. Does your lordship know how often he was respited? A. According to my recollection he was respited twice; three times, if I may mention the respite of his execution at the assizes. You asked if I sent the recommendation. I did send it to Mr. Pelham, and I got an answer that the Lord Lieutenant was not in town, and that he had no opportunity of consulting him; and that therefore for the present he could do no more than recommend a respite for two days; in consequence of which I respited the execution for sixteen days, in order to give time. After I came to town, there was another of a few days —(I believe from Monday to Thursday) and then a further one of a few days more.

Q. Does your lordship know Doctor M'Cartney's hand-writing?
A. I do not believe I do; I never saw him write. I know him, and did when in the College; but I cannot say that I ever saw him write.

Q. Does your lordship know did Mr. M'Cartney lay any affidavit before government respecting Wheatly, the witness, against Mr. Orr?
A. I know he did.

Q. Does your lordship know was it an imputation against the character of Wheatly?

Mr. ATTORNEY-GENERAL.—I object to his lordship answering that question.

Lord YELVERTON.—I would have it understood that I have no objection to answer any question.

Mr. Justice DOWNES.—I am decidedly of opinion that such evidence is not admissible.

Mr. SAMPSON.—Then your lordship's decision is, that we cannot go into any evidence of the truth of the publication, either for the end of justification or extenuation.

Mr. Justice DOWNES.—I do; I hold it so expressly. I hold it to be the constant law. It is the law of the land. It has never been a doubt; it is a question not even admitted to debate. The question was put to the twelve judges while the libel bill was in progress. The question was, whether the truth or falsehood were material, or to be let to go to the jury on the trial of a libel; and to that question it was answered, that truth or falsehood is not material, or to be left to a jury on the trial of an information or indictment; and the opinion goes further and says, we consider it so firmly settled that it cannot now be drawn into debate.

Mr. ORR (for the traverser).—If your lordship has not fully determined, I trust I might be able to show your lordship, particularly in the case of the seven bishops, who were charged with a libel for falsely and maliciously denying the dispensing power, the court permitted them to produce the rolls of parliament to shew they were true.

Mr. Justice DOWNES.—I am determined on the inadmissibility of the truth of the fact.

Mr. ORR.—I do not consider the decision of Holloway and Powel less constitutional, though they were displaced by King James for that opinion.

Mr. Justice DOWNES.—If it wanted anything to strengthen it, it is to be found in the act of parliament. It has been adopted by the judges; and they have not thought fit to vary the practice.

Mr. E. Cooke, Chief Clerk in the Secretary of State's office.—

Examined by **Mr. M'NALLY**.

Q. Do you recollect a paper transmitted to your office by Lord Yelverton, as the recommendation of the jury that convicted Mr. Orr? **A.** I do recollect it was sent.

Q. Do you recollect if any paper was brought to your office respecting the trial of Mr. Orr, and delivered by Mr. Macartney in person?

Mr. Justice DOWNES.—What relevancy does that bear to the case?

Mr. M'NALLY.—To shew that mercy was denied.

Mr. Justice DOWNES.—I will not suffer that evidence to be gone into.

Mr. M'NALLY (to Mr. Cooke).—Do you know whether the papers containing the recommendation of the jury that convicted Mr. Orr were laid before the Lord Lieutenant?

Mr. Justice DOWNES.—I will not let that question be answered.

Mr. M'NALLY (to the jury).—Since evidence of truth will not be allowed, the jury will conclude that the evidence rejected is true.

Evidence on both sides closed.

The evidence being closed, **Mr. CURRAN** addressed the court and jury on the part of the traverser. Never, said he, did I feel myself so sunk under the importance of any cause; to speak to a question of this kind at any time, would require the greatest talent and the most matured deliberation; but to be obliged, without either of these advantages, to speak to a question that hath so deeply shaken the feelings of this already irritated and agitated nation, is a task that fills me with embarrassment and dismay. Neither my learned colleague or myself received any instruction or license until after the jury were actually sworn, and we both of us came here, under an idea that we should not take any part in the trial. This circumstance I mention, not as an idle apology for an effort that cannot be the subject of either praise or censure, but as a call upon you, gentlemen of the jury, to supply the defects of my efforts by a double exertion of your attention.

Perhaps I ought to regret that I cannot begin with any compliment that may recommend me or my client personally to your favour. A more artful advocate would probably begin his address to you by

compliments on your patriotism, and by felicitating his client upon the happy selection of his jury, and that unsuspected impartiality in which, if he was innocent, he must be safe. You must be conscious, gentlemen, that such idle verbiage as that could not convey either my sentiments or my client's upon that subject. You know, and we know, upon what occasion you are come, and by whom you have been chosen ; you are come to try an accusation professedly brought forward by the state, chosen by a sheriff who is appointed by our accuser.

(Here Mr. Attorney-General said the sheriff was elected by the city, and that that observation was therefore unfounded.)

Be it so ; I will not now stop to inquire whose property the city may be considered to be, but the learned gentleman seems to forget that the election by that city, to whosoever it may belong, is absolutely void without the approbation of that very Lord Lieutenant, who is the prosecutor in this case. I do, therefore, repeat, gentlemen, that not a man of you has been called to that box by the voice of my client ; that he has had no power to object to a single man among you, though the crown has, and that you yourselves must feel under what influence you are chosen, or for what qualifications you are particularly selected. At a moment when this wretched land is shaken to its centre by the dreadful conflicts of the different branches of the community, between those who call themselves the partisans of liberty, and those who call themselves the partisans of power ; between the advocates of infliction and the advocates of suffering ; upon such a question as the present, and at such a season, can any man be at a loss to guess from what class of character and opinion, a friend to either party would resort for that jury which was to decide between both. I trust, gentlemen, you know me too well to suppose that I could be capable of treating you with any personal disrespect ; I am speaking to you in the honest confidence of your fellow-citizen. When I allude to those unworthy imputations of supposed bias, or passion, or partiality, that may have marked you out for your present situation ; I do so in order to warn you of the ground on which you stand, of the point of awful responsibility in which you are placed, to your conscience and to your country ; and to remind you that if you have been put into that box from any unworthy reliance on your complaisance or your servility, you have it in your power, before you leave it, to refute and to punish so vile an expectation by the integrity of your verdict ; to remind you that you have it in your power to shew to as many Irishmen as yet linger in their country, that all law and justice have not taken their flight with our prosperity and our peace ; that the sanctity of an oath and the honesty of a juror are not yet dead amongst us ; and that if our courts of justice are superseded by so many strange and terrible tribunals, it is not because they are deficient either in wisdom or virtue.

Gentlemen, it is necessary that you should have a clear idea, first, of the law by which this question is to be decided ; secondly, of the nature and object of the prosecution. As to the first, it is my duty to inform you that the law respecting libels has been much changed of late. Heretofore, in consequence of some decisions of the judges in Westminster-hall, the jury was conceived to have no province but

that of finding the truth of the innuendoes and the fact of publication ; but the libellous nature of that publication, as well as the guilt or innocence of the publication, were considered as exclusively belonging to the court. In a system like that of law, which reasons logically, no one erroneous principle can be introduced, without producing every other that can be deducible from it. If, in the premises of any argument, you admit one erroneous proposition, nothing but bad reasoning can save the conclusion from falsehood. So it has been with this encroachment of the court upon the province of the jury with respect to libels. The moment the court assumed as a principle that they, the court, were to decide upon everything but the publication ; that is, that they were to decide upon the question of libel or no libel, and upon the guilt or innocence of the intention, which must form the essence of every crime ; the guilt or innocence must, of necessity, have ceased to be material. You see, gentlemen, clearly that the question of intention is a mere question of fact. Now, the moment the court determined that the jury was not to try that question, it followed, of necessity, that it was not to be tried at all ; for the court cannot try a question of fact. When the court said that it was not triable, there was no way of fortifying that extraordinary proposition, except by asserting that it was not material. The same erroneous reasoning carried them another step, still more mischievous and unjust ; if the intention had been material, it must have been decided upon as a mere fact under all its circumstances. Of these circumstances, the meanest understanding can see that the leading one must be the truth or the falsehood of the publication ; but, having decided the intention to be immaterial, it followed that the truth must be equally immaterial ; and, under the law so distorted, any man in England who published the most undeniable truth, and with the purest intention, might be punished for a crime in the most ignominious manner, without imposing on the prosecutor the necessity of proving his guilt, or getting any opportunity of shewing his innocence. I am not in the habit of speaking of legal institutions with disrespect, but I am warranted in condemning that usurpation upon the rights of juries, by the authority of that statute, by which your jurisdiction is restored. For that restitution of justice, the British subject is indebted to the splendid exertions of Mr. Fox and Mr. Erskine, those distinguished supporters of the constitution and of the law ; and I am happy to say to you, that though we can claim no share in the glory they have so justly acquired, we have the full benefit of their success : for you are now sitting under a similar act, passed in this country, which makes it your duty and your right to decide upon the entire question, upon its broadest grounds, and under all its circumstances ; and, of course, to determine, by your verdict, whether this publication be a false and scandalous libel ; false in fact, and published with the seditious purpose alledged, of bringing the government into scandal, and instigating the people to insurrection.

Having stated to you, gentlemen, the great and exclusive extent of your jurisdiction, I shall beg leave to suggest to you a distinction that will strike you at first sight ; and that is the distinction between public animadversions upon the character of private individuals, and those which are written upon measures of government, and the persons

who conduct them. The former may be called personal, and the latter political publications. No two things can be more different in their nature, nor in the point of view in which they are to be looked on by a jury. The criminality of a mere personal libel consists in this, that it tends to a breach of the peace; it tends to all the vindictive paroxysms of exasperated vanity, or to the deeper and more deadly vengeance of irritated pride. The truth is, few men see at once that they cannot be hurt so much as they think by the mere battery of a newspaper. They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawling of a news-hawker. If it is wantonly aspersed, it is but for a season, and that a short one, when it emerges, like the moon, from a passing cloud to its original brightness. It is right, however, that the law, and that you should hold the strictest hand over this kind of public animadversion, that forces humility and innocence from their retreat into the glare of public view; that wounds and terrifies, that destroys the cordiality and the peace of domestic life, and that without eradicating a single vice or a single folly, plants a thousand thorns in the human heart.

In cases of that kind I perfectly agree with the law, as stated from the bench; in such cases, I hesitate not to think, that the truth of a charge ought not to justify its publication. If a private man is charged with a crime, he ought to be prosecuted in a court of justice, where he may be punished if it is true, and the accuser if it be false; but far differently do I deem of the freedom of political publication. The salutary restraint of the former species, which I talked of, is found in the general law of all societies whatever; but the more enlarged freedom of the Press, for which I contend in political publication, I conceive to be founded in the peculiar nature of the British constitution, and to follow directly from the contract on which the British government hath been placed by the Revolution. By the British constitution, the power of the state is a trust, committed by the people, upon certain conditions, by the violation of which, it may be abdicated by those who hold, and resumed by those who conferred it. The real security, therefore, of the British sceptre, is the sentiment and opinion of the people; and it is consequently their duty to observe the conduct of the government, and it is the privilege of every man to give them full and just information upon that important subject. Hence the liberty of the Press is inseparably twined with the liberty of the people. The Press is the great public monitor; its duty is that of the historian and the witness, that "*Nil falsi audeat, nil veri non audeat dicere*;" that its horizon shall extend to the farthest verge and limit of truth; that beyond that limit it shall not dare to pass; that it shall speak truth to the King, in the hearing of the people, and to the people in the hearing of the King: that it shall not perplex either the one or the other with false alarm, lest it lose its character for veracity, and become an unheeded warner of real danger, lest it should vainly warn them of that sin, of which the inevitable consequence is death. This, gentlemen, is the great privilege upon which you are to decide; and I have detained you the longer, because of the late change of the law, and because of some

observations that have been made, which I shall find it necessary to compare with the principles I have now laid down.

And now, gentlemen, let us come to the immediate subject of the trial, as it is brought before you by the charge in the indictment, to which it ought to have been confined ; and also, as it is presented to you by the statement of the learned counsel, who has taken a much wider range than the mere limits of the accusation, and has endeavoured to force upon your consideration extraneous and irrelevant facts, for reasons which it is my duty to explain. The indictment states simply that Mr. Finerty has published a false and scandalous libel upon the Lord Lieutenant of Ireland, tending to bring his government into disrepute, and to alienate the affections of the people ; and one would have expected that, without stating any other matter, the counsel for the crown would have gone directly to the proof of this allegation ; but he has not done so ; he has gone to a most extraordinary length, indeed, of preliminary observation, and an allusion to facts, and sometimes an assertion of facts, at which, I own I was astonished, until I saw the drift of these allusions and assertions. Whether you have been fairly dealt with by him, or are now honestly dealt with by me, you must be judges. He has been pleased to say that this prosecution is brought against this letter signed " Marcus," merely as a part of what he calls a system of attack upon government by the paper called the *Press*. As to this, I will only ask you whether you are fairly dealt with ? Whether it is fair treatment to men upon their oaths, to insinuate to them, that the general character of a newspaper (and that general character founded merely upon the assertion of the prosecutor) is to have any influence upon their minds, when they are to judge of a particular publication ? I will only ask you what men you must be supposed to be, when it is thought that even in a court of justice, and with the eyes of the nation upon you, you can be the dupes of that trite and exploded expedient, so scandalous of late in this country, of raising a vulgar and mercenary cry, against whatever man, or whatever principle it is thought necessary to put down ; and I shall, therefore, merely leave it to your own pride to suggest upon what foundation it could be hoped that a senseless clamour of that kind could be echoed back by the yell of a jury upon their oaths. I trust you see that this has nothing to do with the question.

Gentlemen of the jury, other matters have been mentioned, which I must repeat for the same purpose ; that of shewing you that they have nothing to do with the question. The learned counsel has been pleased to say, that he comes forward in this prosecution as the real advocate for the liberty of the Press, and to protect a mild and a merciful government from its licentiousness ; and he has been pleased to add, that the constitution can never be lost while its freedom remains, and that its licentiousness alone can destroy that freedom. As to that, gentlemen, he might as well have said, that there is only one mortal disease of which a man can die ; I can die the death inflicted by tyranny ; and when he comes forward to extinguish this paper in the ruin of the printer by a state prosecution, in order to prevent its dying of licentiousness, you must judge how candidly he is treating you, both in the fact and in the reasoning. Is it in Ireland, gentlemen,

that we are told licentiousness is the only disease that can be mortal to the press? Has he heard of nothing else that has been fatal to the freedom of publication? I know not whether the printer of the *Northern Star* may have heard of such things in his captivity, but I know that his wife and his children are well apprised that a Press may be destroyed in open day, not by its own licentiousness, but by the licentiousness of a military force. As to the sincerity of the declaration that the state has prosecuted in order to assert the freedom of the Press; it starts a train of thought, of melancholy retrospect, and direful prospect, to which I did not think the learned counsel would have wished to commit your minds. It leads you naturally to reflect at what times, from what motives, and with what consequences the government has displayed its patriotism, by these sorts of prosecutions. As to the motives, does history give you a single instance in which the state has been provoked to these conflicts, except by the fear of truth, and by the love of vengeance? Have you ever seen the rulers of any country bring forward a prosecution from motives of filial piety, for libels upon their departed ancestors? Do you read that Elizabeth directed any of those state prosecutions against the libels which the divines of her times had written against her Catholic sister; or against the other libels which the same gentlemen had written against her Protestant father? No, gentlemen, we read of no such thing; but we know she did bring forward a prosecution from motives of personal resentment, and we know that a jury was found time-serving and mean enough to give a verdict, which she was ashamed to carry into effect. I said the learned counsel drew you back to the times that have been marked by these miserable conflicts. I see you turn your thoughts to the reign of the second James. I see you turn your eyes to those pages of governmental abandonment, of popular degradation, of expiring liberty, of merciless and sanguinary persecution, to that miserable period, in which the fallen and abject state of man might have been almost an argument in the mouth of the Atheist and the blasphemer, against the existence of an all-just and an all-wise first cause; if the glorious era of the Revolution that followed it, had not refuted the impious inference, by shewing that if man descends, it is not in his own proper motion; that it is with labour and with pain, and that he can continue to sink only until by the force and pressure of the descent, the spring of his immortal faculties acquires that recuperative energy and effort that hurries him as many miles aloft—he sinks but to rise again. It is at that period that the state seeks for shelter in the destruction of the Press; it is in a period like that, that the tyrant prepares for the attack upon the people by destroying the liberty of the Press; by taking away that shield of wisdom and of virtue, behind which the people are invulnerable; in whose pure and polished convex, ere the lifted blow has fallen, he beholds his own image, and is turned into stone. It is at those periods that the honest man dares not speak, because truth is too dreadful to be told; is it then humanity has no ears, because humanity has no tongue? It is then the proud man scorns to speak, but, like a physician baffled by the wayward excesses of a dying patient, retires indignantly from the bed of an unhappy wretch, whose ear is too fastidious to bear the sound of wholesome advice, whose palate is

too debauched to bear the salutary bitter of the medicine that might redeem him ; and therefore leaves him to the felonious piety of the slaves that talk to him of life, and strip him before he is cold.

I do not care, gentlemen, to exhaust too much of your attention by following this subject through the last century with much minuteness ; but the facts are too recent in your mind not to shew you that the liberty of the Press and the liberty of the people sink and rise together ; that the liberty of speaking and the liberty of acting have shared exactly the same fate. You must have observed in England that their fate has been the same in the successive vicissitudes of their late depression ; and, sorry I am to add, that this country has exhibited a melancholy proof of their inseparable destiny, through the various and further stages of deterioration down to the period of their final extinction : when the constitution has given place to the sword, and the only printer in Ireland who dares to speak for the people, is now in the dock.

Gentlemen, the learned counsel has made the real subject of this prosecution so small a part of his statement, and has led you into so wide a range, certainly as necessary to the object, as inapplicable to the subject of this prosecution, that I trust you will think me excusable in somewhat following his example. Glad am I to find that I have the authority of the same example, for coming at last to the subject of this trial. I agree with the learned counsel, that the charge made against the Lord Lieutenant of Ireland is that of having grossly and inhumanly abused the royal prerogative of mercy, of which the King is only the trustee for the benefit of the people. The facts are not controverted. It has been asserted, that their truth or falsehood is indifferent, and they are shortly these, as they appear in this publication.

William Orr was indicted for having administered the oath of an United Irishman. Every man now knows what that oath is ; that it is simply an engagement, first, to promote a brotherhood of affection among men of all religious distinctions ; secondly, to labour for the attainment of a Parliamentary Reform ; and, thirdly, an obligation of secrecy, which was added to it when the Convention law made it criminal and punishable to meet by any public delegation for that purpose. After remaining upwards of a year in gaol, Mr. Orr was brought to his trial ; was prosecuted by the state ; was sworn against by a common informer of the name of Wheatly, who himself had taken the obligation, and was convicted under the Insurrection act, which makes the administering such an obligation felony of death. The jury recommended Mr. Orr to mercy ; the judge, with an humanity becoming his character transmitted the recommendation to the noble prosecutor in this case. Three of the jurors made solemn affidavit in court that liquor had been conveyed into their box ; that they were brutally threatened by some of their fellow-jurors with capital prosecution if they did not find the prisoner guilty ; and that under the impression of those threats, and worn down by watching and intoxication, they had given a verdict of guilty against him, though they believed him in their conscience to be innocent. That further enquiries were made, which ended in a discovery of the infamous life and character of the informer ; that a respite was therefore sent once,

and twice, and thrice to give time, as Mr. Attorney-General has stated, for his Excellency to consider whether mercy could be extended to him or not; and that with a knowledge of all these circumstances his Excellency did finally determine that mercy should not be extended to him, and that he was accordingly executed upon that verdict. Of this publication, which the indictment charges to be false and seditious, Mr. Attorney-General is pleased to say that the design of it is to bring the courts of justice into contempt. As to this point of fact, gentlemen, I beg to set you right.

To the administration of justice, so far as it relates to the judges, this publication has not even an allusion in any part mentioned in this indictment; it relates to a department of justice that cannot begin until the duty of the judge is closed. Sorry should I be, that with respect to this unfortunate man, any censure should be flung on those judges who presided at this trial, with the mildness and temper that became them upon so awful an occasion as the trial of life and death. Sure am I, that if they had been charged with inhumanity or injustice, and if they had condescended at all to prosecute the reviler, they would not have come forward in the face of the public to say, as has been said this day, that it was immaterial whether the charge was true or not. Sure I am, their first object would have been to show that it was false; and ready should I have been, an eye-witness of the fact, to have discharged the debt of ancient friendship, of private respect, and of public duty, and, upon my oath, to have repelled the falsehood of such an imputation. Upon this subject, gentlemen, the presence of those venerable judges restrains what I might otherwise have said; nor should I have named them at all if I had not been forced to do so, and merely to undeceive you if you have been made to believe their characters to have any community of cause whatever with the Lord Lieutenant of Ireland. To him alone it is confined, and against him the charge is made, as strongly I suppose as the writer could find words to express it, that the viceroy of Ireland has cruelly abused the prerogative of royal mercy, in suffering a man under such circumstances to perish like a common malefactor. For this Mr. Attorney-General calls for your conviction as a false and scandalous libel; and after stating himself every fact that I have repeated to you, either from his statement or from the evidence, he tells you that you ought to find it false and scandalous, though he almost in words admits that it is not false, and has resisted the admission of the evidence by which we offered to prove every word of it to be true.

And here, gentlemen, give me leave to remind you of the parties before you. The traverser is a printer, who follows that profession for bread, and who at a time of great public misery and terror, when the people are restrained by law from debating under any delegated form; when the few constituents that we have are prevented by force from meeting in their own persons, to deliberate or to petition; when every other newspaper in Ireland is put down by force, or purchased by the administration (though here, gentlemen, perhaps I ought to beg your pardon for stating without authority—I recollect when we attempted to examine as to the number of newspapers in the pay of the Castle, that the evidence was objected to); at a season like this,

Mr. Finerty has had the courage, perhaps the folly, to print the publication in question, from no motive under heaven to malice or vengeance, but in the mere duty which he owes to his family and to the public. His prosecutor is the King's minister in Ireland: in that character does the learned gentleman mean to say, that his conduct is not a fair subject of public observation? Where does he find his authority for that in the law or practice of the sister country? Have the virtues, or the exalted station, or the general love of his people preserved the sacred person, even of the royal master of the prosecutor, from the asperity and the intemperance of public censure, unfounded as it ever must be, with any personal respect to his Majesty, injustice, or truth? Have the gigantic abilities of Mr. Pitt, have the more gigantic talents of his great antagonist, Mr. Fox, protected either of them from the insolent familiarity, and for aught to know, the injustice with which writers have treated them? What latitude of invective has the King's minister escaped upon the subject of the present war? Is there an epithet of contumely or of reproach, that hatred or that fancy could suggest, that are not publicly lavished upon him? Do you not find the words, "advocate of despotism, robber of the public treasure, murderer of the King's subjects, debaucher of the public morality, degrader of the constitution, tarnisher of the British empire," by frequency of use lose all meaning whatsoever, and dwindle into terms, not of any peculiar reproach, but of ordinary appellation? And why, gentlemen, is this permitted in that country? I will tell you why: because in that country they are yet wise enough to see, that the measures of the state are the proper subjects for the freedom of the Press; that the principles relating to personal slander do not apply to rulers or to ministers; that to publish an attack upon a public minister, without any regard to truth, but merely because of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, gentlemen, I pray you in such a case? Is it the tendency of such publications to provoke Mr. Pitt or Mr. Dundas to break the head of the writer, if they should happen to meet him? No, gentlemen, in that country this freedom is exercised, because the people feel it to be their right; and it is wisely suffered to pass by the state, from a consciousness that it would be vain to oppose it—a consciousness confirmed by the event of every incautious experiment. It is suffered to pass from a conviction that in a court of justice at least the bulwarks of the constitution will not be surrendered to the state; and that the intended victim, whether clothed in the humble guise of honest industry, or decked in the honours of genius, and virtue, and philosophy, whether an Hardy or a Tooke, will find certain protection in the honesty and spirit of an English jury.

But, gentlemen, I suppose Mr. Attorney will scarcely wish to carry his doctrine altogether so far. Indeed, I remember, he declared himself a most zealous advocate for the liberty of the Press. I may, therefore, even according to him, presume to make some observations on the conduct of the existing government. I should wish to know how far he supposes it to extend. Is it to the composition of lampoons and madrigals, to be sung down the grates by ragged ballad-mongers to kitchen-maids and footmen? I will not suppose that he means to confine it to the ebullitions of Billingsgate, to those cataracts of

ribaldry and scurrility, that are daily spouting upon the miseries of our wretched fellow-sufferers, and the unavailing efforts of those who have vainly laboured in their cause. I will not suppose that he confines it to the poetic licence of a birth-day ode—the Laureat would not use such language—in which case I do entirely agree with him, that the truth or the falsehood is as perfectly immaterial to the law, as it is to the Laureat; as perfectly unrestrained by the law of the land, as it is by any law of decency, or shame, or modesty, or decorum. But as to the privilege of censure or blame, I am sorry that the learned gentleman has not favoured you with his notion of the liberty of the Press. Suppose an Irish viceroy acts a very little absurdity. May the Press venture to be respectfully comical upon that absurdity? The learned counsel does not at least in terms give a negative to that. But let me treat you honestly, and go further, to a more material point: suppose an Irish viceroy does an act that brings scandal upon his master—that fills the mind of a reasonable man with the fear of approaching despotism, that leaves no hope to the people of preserving themselves and their children from chains, but in common confederacy for common safety. What is that honest man in that case to do? I am sorry the right honourable advocate for the liberty of the Press has not told you his opinion, at least in any express words. I will therefore venture to give you my far humbler thought upon the subject. I think an honest man ought to tell the people frankly and boldly of their peril, and I must say I can imagine no villainy greater than that of holding a traitorous silence at such a crisis—except the villainy and baseness of prosecuting him; or of finding him guilty for such an honest discharge of his public duty. And I found myself on the known principle of the Revolution of England, namely, that the crown itself may be abdicated by certain abuses of the trust reposed, and that there are possible excesses of arbitrary power, which it is not only the right but the bounden duty of every honest man to resist at the risk of his fortune and his life. Now, gentlemen, if this reasoning be admitted, and it cannot be denied—if there be any possible event in which the people are obliged to look only to themselves, and are justified in doing so, can you be so absurd as to say that it is lawful to the people to act upon it when it unfortunately does arrive, but that it is criminal in any man to tell them that the miserable event has actually arrived, or is imminently approaching? Far am I, gentlemen, from insinuating that (extreme as it is) our misery has been matured into any deplorable crisis of this kind, from which I pray that the Almighty God may for ever preserve us. But I am putting my principle upon the strongest ground, and most favourable to my opponents, namely, that it never can be criminal to say anything of the government but what is false, and I put this in the extreme in order to demonstrate to you *a fortiori*, that the privilege of speaking truth to the people which holds in the last extremity must also obtain in every stage of inferior importance; and that, however, a court may have decided before the late act, that the truth was immaterial in case of libel, that since that act no honest jury can be governed by such a principle.

Be pleased now, gentlemen, to consider the grounds upon which this publication is called a libel, and criminal. Mr. Attorney tells

you, it tends to excite sedition and insurrection. Let me again remind you, that the truth of this charge is not denied by the noble prosecutor. What is it then that tends to excite sedition and insurrection? The act that is charged upon the prosecutor, and is not attempted to be denied. And, gracious God! gentlemen of the jury, is the public statement of the King's representative this? "I have done a deed that must fill the mind of every feeling or thinking man with horror and indignation, that must alienate every man that knows it, from the King's government, and endanger the separation of this distracted empire; the traverser has had the guilt of publishing this fact, which I myself acknowledge, and I pray you to find him guilty." Is this the case which the Lord Lieutenant of Ireland brings forward? Is this the principle for which he ventures, at a dreadful crisis like the present, to contend in a court of justice? Is this the picture which he wishes to hold out of himself to the justice and humanity of his own countrymen? Is this the history which he wishes to be read by the poor Irishman of the south and of the north, by the sister nation and the common enemy?

With the profoundest respect, permit me humbly to defend his Excellency, even against his own opinion. The guilt of this publication he is pleased to think consists in this, that it tends to insurrection. Upon what can such a fear be supported? After the multitudes that have perished in this unhappy nation within the last three years, and which has been borne with a patience unparalleled in the story of nations, can any man suppose that the fate of a single individual could lead to resistance or insurrection? But suppose that it might, what ought to be the conduct of an honest man? Should it not be to apprise the government and the country of the approaching danger? Should it not be to say to the viceroy, you will drive the people to madness if you persevere in such bloody councils, you will alienate the Irish nation, you will distract the common force, and you will invite the common enemy. Should not an honest man say to the people, the measure of your affliction is great, but you need not resort for remedy to any desperate expedients. If the King's minister is defective in humanity or wisdom, his royal master, and your beloved Sovereign, is abounding in both; at such a moment can you be so senseless as not to feel that any one of you ought to hold such language, or is it possible you could be so infatuated as to punish the man who was honest enough to hold it? Or is it possible that you could bring yourselves to say to your country, that at such a season the Press ought to sleep upon its post; or to act like the perfidious watchman on his round, that sees the villain wrenching the door, or the flames bursting from the windows, while the inhabitant is wrapt in sleep, and cries out that "past five o'clock, the morning is fair, and all well."

On this part of the case I shall only put one question to you. I do not affect to say it is similar in all its points; I do not affect to compare the humble fortunes of Mr. Orr with the sainted names of Russell or of Sydney; still less am I willing to find any likeness between the present period and the year 1683. But I will put a question to you, completely parallel in principle. When that unhappy and misguided Monarch had shed the sacred blood which

their noble hearts had matured into a fit cement of revolution, if any honest Englishman had been brought to trial for daring to proclaim to the world his abhorrence of such a deed, what would you have thought of the English jury that could have said—we know in our hearts that what he said was true and honest; but we will say upon our oaths that it was false and criminal, and we will by that base subserviency, add another item to the catalogue of public wrongs, and another argument for the necessity of an appeal to heaven for redress?

Gentlemen, I am perfectly aware that what I say may be easily misconstrued, but if you listen to me with the same fairness that I address you, I cannot be misunderstood. When I show you the full extent of your political rights and remedies; when I answer those slanderers of British liberty, which degrade the Monarch into a despot, who degrade the steadfastness of law into the waywardness of will; when I show you the inestimable stores of political wealth so dearly acquired by our ancestors, and so solemnly bequeathed; and when I show you how much of that precious inheritance has yet survived all the prodigality of their posterity, I am far from saying that I stand in need of it all upon the present occasion. No, gentlemen, far indeed am I from such a sentiment. No man more deeply than myself, deplors the present melancholy state of our unhappy country. Neither does any man more fervently wish for the return of peace and tranquillity through the natural channels of mercy and of justice. I have seen too much of force and of violence, to hope much good from the continuance of them on one side, or retaliation from another. I have seen too much of late of political re-building, not to have observed that to demolish is not the shortest way to repair. It is with pain and anguish that I should search for the miserable right of breaking ancient ties, or going in quest of new relations or untried adventurers. No, gentlemen, the case of my client rests upon these sad privileges of despair. I trust that as to the fact, namely, the intention of exciting insurrection, you must see it cannot be found in this publication, that it is the mere idle, unsupported imputation of malice, or panic, or falsehood. And that as to the law, so far has he been from transgressing the limits of the constitution, that whole regions lie between him and those limits which he has not trod; and which, I pray to heaven, it may never be necessary for any of us to tread.

Gentlemen, Mr. Attorney-General has been pleased to open another battery upon this publication, which I do trust I shall silence, unless I flatter myself too much in supposing that hitherto my resistance has not been utterly unsuccessful. He abuses it for the foul and insolent familiarity of its address. I do clearly understand his idea: he considers the freedom of the Press to be the licence of offering that paltry adulation which no man ought to stoop to utter or to hear—he supposes the freedom of the Press ought to be like the freedom of a King's jester, who, instead of reproving the faults of which his Majesty ought to be ashamed, is base and cunning enough, under the mask of servile and adulatory censure, to stroke down and pamper those vices of which he is foolish enough to be vain. He would not have the Press presume to tell the viceroy that the prerogative of

mercy is a trust for the benefit of the subject, and not a gaudy feather stuck into the diadem to shake in the wind, and by the waving of the gaudy plumage to amuse the vanity of the wearer. He would not have it say to him that the discretion of the crown as to mercy, is like the discretion of a court of justice as to law; and that in the one case, as well as the other, wherever the propriety of the exercise of it appears, it is equally a matter of right. He would have the Press all fierceness to the people, and all sycophancy to power; he would have it consider the mad and phrenetic depopulations of authority, like the awful and inscrutable dispensations of Providence, and say to the unfeeling and despotic spoiler, in the blasphemed and insulted language of religious resignation—"the Lord hath given, and the Lord hath taken away, blessed be the name of the Lord!!!" But let me condense the generality of the learned gentleman's invective into questions that you can conceive. Does he mean that the air of this publication is rustic and unworthy? Does he mean that when "Marcus" presumed to ascend the steps of the Castle, and to address the viceroy, he did not turn out his toes as he ought to have done?—but, gentlemen, you are not a jury of dancing-masters—or does the learned gentleman mean that the language is coarse and vulgar? If this be his complaint, my client has but a poor advocate. I do not pretend to be a mighty grammarian or a formidable critic; but I would beg leave to suggest to you in serious humility, that a free Press can be supported only by the ardour of men who feel the prompting sting of real or supposed capacity; who write from the enthusiasm of virtue, or the ambition of praise; or over whom if you exercise the rigour of a grammatical censorship, you will inspire them with as mean an opinion of your integrity as your wisdom, and inevitably drive them from their post—and if you do, rely upon it you will reduce the spirit of publication, and with it the Press of this country, to what it for a long interval has been, the register of births, and fairs, and funerals, and the general abuse of the people and their friends.

But, gentlemen, in order to bring this charge of insolence and vulgarity to the test, let me ask you whether you know of any language which could have adequately described the idea of mercy denied where it ought to have been granted, or of any phrase vigorous enough to convey the indignation which an honest man would have felt upon such a subject? Let me beg of you for a moment to suppose that any one of you had been the writer of this very severe expostulation with the viceroy, and that you had been the witness of the whole progress of this never-to-be-forgotten catastrophe. Let me suppose that you had known the charge upon which Mr. Orr was apprehended—the charge of abjuring that bigotry which had torn and disgraced his country, of pledging himself to restore the people of his country to their place in the constitution, and of binding himself never to be the betrayer of his fellow-labourers in that enterprise; that you had seen him upon that charge removed from his industry, and confined in a gaol; that through the slow and lingering progress of twelve tedious months you had seen him confined in a dungeon, shut out from the common use of air and of his own limbs; that day after day you had marked the unhappy captive, cheered by no sound but the cries of his family, or the clinking of chains; that you had seen him at last brought to his trial; that

you had seen the vile and perjured informer deposing against his life; that you had seen the drunken, and worn-out, and terrified jury give in a verdict of death; that you had seen the same jury, when their returning sobriety had brought back their consciences, prostrate themselves before the humanity of the bench, and pray that the mercy of the crown might save their characters from the reproach of an involuntary crime, their consciences from the torture of eternal self-condemnation, and their souls from the indelible stain of innocent blood. Let me suppose that you had seen the respite given, and that contrite and honest recommendation transmitted to that seat where mercy was presumed to dwell; that new, and before unheard-of, crimes are discovered against the informer; that the royal mercy seems to relent, and that a new respite is sent to the prisoner; that time is taken, as the learned counsel for the crown has expressed it, to see whether mercy could be extended or not! that after that period of lingering deliberation passed, a third respite is transmitted; that the unhappy captive himself feels the cheering hope of being restored to a family that he had adored, to a character that he had never stained, and to a country that he had ever loved; that you had seen his wife and children upon their knees, giving those tears to gratitude which their locked and frozen hearts could not give to anguish and despair, and imploring the blessings of eternal Providence upon his head who had graciously spared the father, and restored him to his children; that you had seen the olive branch sent into his little ark, but no sign that the waters had subsided. "Alas! nor wife nor children more shall he behold; nor friends nor sacred home!" No seraph mercy unbars his dungeon, and leads him forth to light and life, but the minister of death hurries him to the scene of suffering and of shame; where, unmoved by the hostile array of artillery and armed men collected together, either to secure, or to insult, or to disturb him, he dies with a solemn declaration of his innocence, and utters his last breath in a prayer for the liberty of his country. Let me now ask you, if any of you had addressed the public ear upon so foul and monstrous a subject, in what language would you have conveyed the feelings of horror and indignation? Would you have stooped to the meanness of qualified complaint?—would you have been mean enough? But I entreat your forgiveness—I do not think meanly of you; had I thought so meanly of you, I could not suffer my mind to commune with you as it has done; had I thought you that base and vile instrument, attuned by hope and by fear into discord and falsehood, from whose vulgar string no groan of suffering could vibrate, no voice of integrity or honour could speak; let me honestly tell you, I should have scorned to fling my hand across it; I should have left it to a fitter minstrel; if I do not therefore grossly err in my opinion of you, I could use no language upon such a subject as this, that must not lag behind the rapidity of your feelings, and that would not disgrace those feelings if it attempted to describe them.

Gentlemen, I am not unconscious that the learned counsel for the crown seemed to address you with a confidence of a very different kind; he seemed to expect a kind and respectful sympathy from you with the feelings of the Castle, and the griefs of chided authority. Perhaps, gentlemen, he may know you better than I do; if he does, he has spoken to you as he ought; he has been right in telling you,

that if the reprobation of this writer is weak, it is because his genius could not make it stronger; he has been right in telling you that his language has not been braided and festooned as elegantly as it might; that he has not pinched the miserable plaits of his phraseology, nor placed his patches and feathers with that correctness of millinery which became so exalted a person. If you agree with him, gentlemen of the jury—if you think that the man who, at the hazard of his own life, to rescue from the deep the drowned honour of his country, must not presume upon the guilty familiarity of plucking it up by the locks, I have no more to say; do a courteous thing. Upright and honest jurors, find a civil and obliging verdict against the printer! and when you have done so, march through the ranks of your fellow-citizens to your homes, and bear their looks as they pass along; retire to the bosom of your families and your children, and when you are presiding over the morality of the parental board, tell those infants, who are to be the future men of Ireland, the history of this day. Form their young minds by your precepts, and confirm those precepts by your own example; teach them how discreetly allegiance may be perjured on the table, or loyalty be forsworn in the jury-box; and when you have done so, tell them the story of Orr; tell them of his captivity, of his children, of his crime, of his hopes, of his disappointments, of his courage, and of his death; and when you find your little hearers hanging from your lips, when you see their eyes overflow with sympathy and sorrow, and their young hearts bursting with the pangs of anticipated orphanage, tell them that you had the boldness and the justice to stigmatise the monster—who had dared to publish the transaction! Gentlemen, I believe I told you before that the conduct of the viceroy was a small part indeed of the subject of this trial. If the vindication of his mere personal character had been as it ought to have been, the sole object of this prosecution, I should have felt the most respectful regret at seeing a person of his high consideration come forward in a court of public justice, in one and the same breath to admit the truth, and to demand the punishment of a publication like the present; to prevent the chance he might have had of such an accusation being disbelieved, and by a prosecution like this to give to the passing stricture of a newspaper that life, and body, and action, and reality that proves it to all mankind, and makes the record of it indelible. Even as it is, I do own I feel the utmost concern that his name should have been soiled by being mixed in a question of which it is the mere pretext and scape-goat. Mr. Attorney was too wise to state to you the real question or the object which he wished to be answered by your verdict. Do you remember that he was pleased to say that this publication was a base and foul misrepresentation of the virtue and wisdom of the government, and a false and audacious statement to the world that the King's government in Ireland was base enough to pay informers for taking away the lives of the people? When I heard this statement to-day I doubted whether you were aware of its tendency or not. It is now necessary that I should explain it to you more at large.

You cannot be ignorant of the great conflict between prerogative and privilege, which hath convulsed the country for the last fifteen years. When I say privilege, you cannot suppose that I mean the

privileges of the House of Commons—I mean the privileges of the people. You are no strangers to the various modes by which the people laboured to approach their object—delegations, conventions, remonstrances, resolutions, petitions to the parliament, petitions to the throne. It might not be decorous in this place to state to you with any sharpness the various modes of resistance that were employed on the other side; but all of you seem old enough to remember the variety of acts of parliament that have been made, by which the people were deprived, session after session, of what they had supposed to be the known and established fundamentals of the constitution—the right of public debate, the right of public petition, the right of bail, the right of trial, the right of arms for self-defence; until at last, even the relics of popular privilege became superseded by military force; the Press extinguished; and the state found its last entrenchment in the grave of the constitution. As little can you be strangers to the tremendous confederations of hundreds of thousands of our countrymen, of the nature and the objects of which such a variety of opinions have been propagated and entertained.

The writer of this letter has presumed to censure the recall of Lord Fitzwilliam, as well as the measures of the present viceroy. Into this subject I do not enter; but you cannot yourselves forget that the conciliatory measures of the former noble lord had produced an almost miraculous unanimity in this country; and much do I regret, and sure I am that it is not without pain you can reflect how unfortunately the conduct of his successor has terminated. His intentions might have been the best, I neither know them nor condemn them, but their terrible effects you cannot be blind to. Every new act of coercion has been followed by some new symptom of discontent; and every new attack provoked some new paroxysm of resentment, or some new combination of resistance. In this deplorable state of affairs, convulsed and distracted within, and menaced by a most formidable enemy from without, it was thought that public safety might be found in union and conciliation, and repeated applications were made to the parliament of this kingdom for a calm inquiry into the complaints of the people; these applications were made in vain. Impressed by the same motives, Mr. Fox brought the same subject before the Commons of England, and ventured to ascribe the perilous state of Ireland to the severity of its government. Even his stupendous abilities, excited by the liveliest sympathy with our sufferings, and animated by the most ardent zeal to restore the strength with the union of the empire, were repeatedly exerted without success. The fact of discontent was denied; the fact of coercion was denied; and the consequence was, the coercion became more implacable, and the discontent more threatening and irreconcilable. A similar application was made in the beginning of this session in the Lords of Great Britain by our illustrious countryman—of whom I do not wonder that my learned friend should have observed how much virtue can fling pedigree into the shade, or how much the transient honour of a body inherited from man is obscured by the lustre of an intellect derived from God. He, after being an eye-witness of this country, presented the miserable picture of what he had seen; and, to the astonishment of every man in Ireland, the existence of those facts was ventured to be denied. The conduct of the present

viceroy was justified and applauded, and the necessity of continuing that conduct was insisted upon, as the only means of preserving the constitution, the peace, and the prosperity of Ireland. The moment the learned counsel had talked of this publication as a false statement of the conduct of the government and the condition of the people, no man could be at a loss to see that that awful question which had been dismissed from the Commons of Ireland and from the Lords and Commons of Great Britain, is now brought forward to be tried by a side-wind, and in a collateral way by a criminal prosecution.

I tell you, therefore, gentlemen of the jury, it is not with respect to Mr. Orr that your verdict is now sought; you are called upon on your oaths to say that the government is wise and merciful, that the people are prosperous and happy, that military law ought to be continued, that the British constitution could not with safety be restored to this country, and that the statements of a contrary import by your advocates in either country were libellous and false. I tell you these are the questions, and I ask you can you have the front to give the expected answer in the face of a community, who know the country as well as you do. Let me ask you, how you could reconcile, with such a verdict, the gaols, the tenders, the gibbets, the conflagrations, the murders, the proclamations that we hear of every day in the streets, and see every day in the country? What are the processions of the learned counsel himself, circuit after circuit? Merciful God! what is the state of Ireland, and where shall you find the wretched inhabitant of this land? You may find him, perhaps, in a gaol, the only place of security, I had almost said of habitation; you may see him flying by the conflagrations of his own dwelling; or you may find his bones bleaching on the green fields of his country; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests, less savage than his persecutors, that drift him to a returnless distance from his family and his home. And yet with these facts ringing in the ears, and staring in the face of the prosecutor, you are called upon to say, on your oaths, that these facts do not exist. You are called upon in defiance of shame, of truth, of honour, to deny the sufferings under which you groan, and to flatter the persecution that tramples you under foot.

But the learned gentleman is further pleased to say, that the traverser has charged the government with the encouragement of informers. This, gentlemen, is another small fact that you are to deny at the hazard of your souls, and upon the solemnity of your oaths. You are upon your oaths to say to the sister country that the government of Ireland uses no such abominable instruments of destruction as informers. Let me ask you, honestly, what do you feel when in my hearing, when in the face of this audience you are called upon to give a verdict, that every man of us, and every man of you, know by the testimony of your own eyes to be utterly and absolutely false? I speak not, now, of the public proclamation for informers with a promise of secrecy and of extravagant reward; I speak not of the fate of those horrid wretches who have been so often transferred from the table to the dock, and from the dock to the pillory; I speak of what your own eyes have seen day after day during the course of this commission, from the box where you are now sitting; the number of

horrid miscreants who avowed upon their oaths, that they had come from the very seat of government;—from the Castle, where they had been worked upon by the fear of death and the hopes of compensation to give evidence against their fellows, that the mild and wholesome councils of this government are holden over these catacombs of living death, where the wretch that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up as a witness.

Is this fancy, or is it fact? Have you not seen him after his resurrection from that tomb, after having been dug out of the region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both? Have you not marked, when he entered, how the stormy wave of the multitude retired at his approach? Have you not marked how the human heart bowed to the supremacy of his power, in the undissembled homage of deferential horror? How this glance, like the lightning of heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted wretch of woe and death—a death which no innocence can escape, no art elude, no force resist, no antidote prevent. There was an antidote—a juror's oath—but even that adamant chain that bound the integrity of man to the throne of eternal justice, is solved and melted in the breath that issues from the informer's mouth; conscience swings from her mooring, and the appalled and affrighted juror consults his own safety in the surrender of the victim—

*Et quæ sibi quisque timebat,
Unius in miseri exitium conversa tulere.*

Gentlemen, I feel I must have tired your patience, but I have been forced into this length by the prosecutor who has thought fit to introduce those extraordinary topics, and to bring a question of mere politics to trial under the form of a criminal prosecution. I cannot say I am surprised that this has been done, or that you should be solicited by the same inducements and from the same motives as if your verdict was a vote of approbation. I do not wonder that the government of Ireland should stand appalled at the state to which we are reduced. I wonder not they should start at the public voice, and labour to stifle or to contradict it. I wonder not that at this arduous crisis, when the very existence of the empire is at stake, and when its strongest and most precious limb is not girt with the sword for battle, but pressed by the tourniquet for amputation; when they find the coldness of death already begun in those extremities where it never ends, that they are terrified at what they have done, and wish to say to the surviving parties of that empire, "they cannot say that we did it." I wonder not that they should consider this conduct as no immaterial question for a court of criminal jurisdiction, and wish anxiously as on an inquest of blood for the kind acquittal of a friendly jury. I wonder not they should wish to close the chaos they have opened by flinging you into the abyss. But trust me, my countrymen, you might persist in it, but you could not close it; trust me if it is yet possible to close it, it can be done only by truth and honour—trust me that such an effect could no more be wrought by the sacrifice of a jury, than by the sacrifice of Orr. As a state

measure, the one would be as unwise and unavailing as the other ; but while you are yet upon the brink, while you are yet visible, let me, before we part, remind you once more of your awful situation. The law upon this subject gives you supreme dominion. Hope not for much assistance from his lordship—on such occasions perhaps the duty of the court is to be cold and neutral. I cannot but admire the dignity he has supported during this trial: I am grateful for his patience. But let me tell you it is not his province to fan the scared flame of patriotism in the jury-box ; as he has borne with the little extravagancies of the law, do you bear with the little failings of the Press. Let me, therefore, remind you, that though the day may soon come when our orders shall be scattered before the winds of heaven, the memory of what you do cannot die ; it will carry down to your posterity your honour or your shame. In the presence and in the name of that ever-living God, I do therefore conjure you to reflect that you have your characters, your consciences ; that you have also the character, perhaps the ultimate destiny of your country in your hands. In that awful name, I do conjure you to have mercy upon your country and upon yourselves, and so to judge now, as you will hereafter be judged ; and I do now submit the fate of my client, and of that country which we yet have, in common, to your disposal.

Mr. PRIME-SERGEANT replied to Mr. Curran. He said it had become very difficult for him to answer the two very contradictory addresses which the counsel for the traverser had made to the jury. It did not appear to him that either of them had attended to the case of their client, but, on the contrary, that they seemed totally regardless of him. He observed at some length on the assertion of Mr. Curran, that the jury had been collected by an officer of the crown for the purpose of convicting the traverser. He subscribed most heartily to the panegyric paid to the honour and integrity every jury ought to possess, and which had been paid to the jury then in the box. He said that the duty of the counsel for the traverser and the counsel for the crown differed ; he ought to make some excuse for the conduct of the former for departing from the duty they owed to their client, and he sincerely hoped the public would pardon them for it.

Mr. PRIME-SERGEANT then observed at length on the libel, which he read paragraph by paragraph. He said many libellous attacks had been made upon the administration of justice in this country, and upon the government ; but it was reserved for the traverser to make a desperate attack upon the temple of justice, profaning its very altars, and reviling its ministers. Notwithstanding, the traverser at the bar stood indicted for having printed and published the libel in the indictment, he firmly believed that the traverser was only an instrument in the hands of others. If it was necessary to look for an aggravation of the offence charged upon the traverser, it would be found in the support given by his counsel, which had consisted of nothing else but the display and pomp of language. Mr. Prime-Sergeant then made a few observations on the nature of the offence with which the traverser stood charged, and said if the jury were of his opinion, it was both a false, scandalous, and seditious libel, and they ought to find him guilty ; if, on the contrary, they did not believe that, then in that case they ought to find him not guilty.

Mr. JUSTICE DOWNES charged the jury. He observed that they had been amused by a display of eloquence from the counsel for the traverser, running wide of the matter before them. He would, however, endeavour to point out to them the object for their consideration, divested of all irrelevant matter. His lordship then stated to the jury the libel, as it appeared on the record, and said that the question which would be for their consideration would be, whether the traverser at the bar was the printer and publisher of the matter called a libel, and to find the intent with which he published it; and if the jury found that the traverser had published the paper called a libel, they were then to inquire whether the inuendoes had been well laid, and properly applied in the indictment, and whether it bears the construction imputed to it by the inuendoes; and if the jury were of opinion that the traverser published it, and that it was a libel, and that the inuendoes had been well laid and properly applied, there could be no doubt on the whole of the case, but that the jury ought to find the traverser guilty.

It was for the jury, his lordship said, to consider well the evidence, and for them also to consider if it carried the force of conviction to their minds, and to consider whether with the evidence, as connected by Major Sirr, (which his lordship repeated,) they had any rational doubt on their minds, that the traverser was the publisher of that paper, called a libel. On this point his lordship said he was not to give a positive opinion, but he left it entirely to the jury, and if they were of opinion that he, the traverser, did publish the letter, then their duty was to see if it was a libel or not.

His lordship then stated the act of parliament to the jury for securing the liberty of the press, by which act is left to the jury the final decision of the question, whether the publication be a libel or not; and at the same time provides that the judge shall give his opinion to the jury whether it is in his mind a libel.

The act of parliament having given to the judge this power, his lordship said he would state to the jury his opinion upon the publication, and it was for them to follow or reject that opinion. In the execution of that duty he would say to them, that a paper which reflects on the administration of the justice of the country, as the paper before them appeared to do; that a paper which leads to degrade the administration of justice in the eyes of the people, which, in his opinion, the paper before the jury did, was a libel. If the jury were of opinion, that the publication called the execution of a criminal in due course of law, murder, let the jury judge for themselves, if that was not a libel—his opinion was that such a charge was a libel. Was not to charge a jury, which had brought in a verdict of guilty against a criminal, with having been beastly drunk, a libel? In his opinion it was. Another offence charged is, that if the criminal had committed the fact for which he suffered, it was no crime, but a meritorious act. With what view could that paper have been written? If upon the whole of the evidence the jury believed that the charge in the indictment states it true, when it says that the libel was printed with a view of devising, contriving, and falsely, maliciously, and seditiously intending, &c., then the charge would be fully established.

There had been no evidence given to show that the publication was

innocent. It was not necessary for the counsel for the prosecution to show another intent of the printer and publisher than what appeared on the face of the paper itself; and if the jury can feel that the intention of the paper was to state a false, seditious, and malicious libel, it would be sufficient to ground their verdict of guilty. His lordship said he took this to be the established law.

His lordship said he had rejected evidence of the truth to be given, because it had been the established law that the truth or falsehood of a libel was immaterial. At the very time the libel bill was going through the House in England, from which the present bill is copied, various questions were put to the judges of England, whether on a trial on an information or indictment for a libel, the truth or falsehood was material. The judges were of opinion that it was not. This opinion was grounded upon a very sound reason; it would be trying a man who was not present, which would be totally inconsistent with the spirit of justice. Another reason why his lordship would not admit the evidence of the truth was, the libel was against the administration of the country; and the court in which he sat had no authority, and was not competent to try the conduct of government; the court of parliament was the only court in which that could be brought forward.

His lordship then said that if the jury did believe that malice directed the publication and writing of that paper termed a libel, it would be for them to consider whether they would adopt the opinion he had given them upon the matter contained in it or not; but that if they had any rational doubt that the paper was not published with a malicious purpose, they ought to acquit him.

The jury retired for a short time, and then brought in a verdict—Guilty.

COUNSEL FOR THE PROSECUTION.

Messrs. ATTORNEY-GENERAL, PRIME-SERGEANT, SOLICITOR-GENERAL,	Messrs. RIDGEWAY, TOWNSEND, and WORTHINGTON.
--	--

Agent—Mr. KEMMIS.

COUNSEL FOR THE TRAVERSEE.

Messrs. CURRAN, FLETCHER, M'NALLY,	Messrs. SAMPSON, SHEARES, and ORR.
--	--

Agent—Mr. M. DOWLING.

The affidavits mentioned in this trial to have been made by the jurors who tried Mr. Orr, are to be found annexed to that gentleman's trial.

SATURDAY, December 23.

This day, Mr. Finerty was brought up to receive sentence. On his being put to the bar, he addressed the judge as follows:—

My lord, from the very able defence which has been made for me, I should think it utterly unnecessary to trouble your lordship with any observations of mine, if the language of Mr. Prime-Sergeant, in his

address to the jury, had had not imperiously demanded some reply. It may accord well with the general system of our government, to inflict a severe punishment upon me; but what end it can answer, to defame and abuse my character, I am at a loss to discover. Among the epithets which the learned counsel so liberally dealt out against me, he was pleased to call me "the tool of a party." However humble I may be, my lord, I should spurn the idea of becoming the instrument of any party, or any man—I was influenced solely by my own sense of the situation of the country, and have uniformly acted from that feeling of patriotism, which I hope it is not yet considered criminal to indulge; and I trust the general conduct of the *Press*, has fully evinced to the people, that its object was truth and the good of the nation, unconnected with the views, or unwarped by the prejudices of any party.

If I would stoop, my lord, to become the tool of a party, I might have easily released myself from prosecution and reward; and this would have been clearly illustrated if your lordship had suffered the persons summoned on my trial to be examined.

I have been now, my lord, eight weeks in confinement, during which I have experienced the severest rigours of a gaol; the offence was bailable, but it became impossible for me, from the humility of my connections, to procure bail to the amount demanded; probably had any person stood forward, he would have been marked; and sensible of that, I preferred imprisonment to the exposure of a friend to danger. But not contented with my imprisonment and prosecution, it seemed the intention of some of the agents of government to render me infamous. For this purpose, my lord, about three weeks since, I was taken from Newgate, which ought at least to have been a place of security to me, at seven o'clock in the evening, by what authority of law I know not, to Alderman Alexander's office; and it was there proposed to me to surrender the different gentlemen who had favoured the *Press* with their productions, particularly the author of "*Marcus*." Every artifice of hope and fear was held out to me. After a variety of interrogations, and after detaining me there until two o'clock in the morning, I was dispatched to Kilmainham under an escort, where being refused admittance, I was returned to Newgate—from whence, about eleven o'clock on the same day, I was again taken to Alderman Alexander's, where I underwent a similar scrutiny, until three o'clock, when the Alderman left me, as he said, to go to Secretary Cooke, to know from him how he would wish to dispose of me, or if he desired to ask me any questions. At eight in the evening, the Alderman, for whom I was obliged to wait, was pleased to write to one of his officers to have me remanded to prison. In the course of this extraordinary inquisition, my lord, I was threatened with a species of punishment, to a man educated as I have been in principles of virtue, and honesty, and manly pride, more terrible than death; a punishment, my lord, which I am too proud to name, and which, were it now to make part of my sentence, I fear, although I hope I am no coward, I should not be able to persuade myself to live to meet. By what authority any man could presume to prejudice your lordship's sentence, or anticipate the verdict of a jury, it is not for me to decide. I cannot conceive what sort of solicitude these men entertain for the dignity

of the Irish character, or the honour of the government, who thus endeavour to stain it by the multiplication of informers. It may be answered, my lord, that informers are useful ; so is the office of common hangman ; but will any man of common honesty, or common sense, imitate the conduct, or plead for the character of either, particularly in a time when so many instances of profligacy have appeared amongst the class ?

With respect to the publication, my lord, which the jury has pronounced a libel, the language of which is undoubtedly in some instances exceptionable, it was received in the letter-box by my clerk, who generally went to the office earlier than I, and taking it to the printing-office, it was instituted, and the whole impression of the paper worked off before I saw it ; but on remonstrating with the author, he produced to me such documents as put the truth of the statement beyond question ; and these documents, my lord, were yesterday in court, and would, combined with the testimony of the witnesses present, if your lordship had permitted their examination, have amply satisfied the jury of the facts. And heretofore, my lord, I have been taught to think that truth was above all things important ; and I never did believe it possible that truth and falsehood were in any instance equally guilty, or that the truth, though it might not altogether acquit, would not so much as extenuate ; for if it would in any degree extenuate the offence, I suppose your lordship would have thought it necessary that it should be heard, and I, of consequence, conceived the publication of " Marcus's " letter not alone innocent but praiseworthy, even though it did contain passages which I do not vindicate ; but your lordship's opinion and the verdict of the jury teaches a different lesson, and may serve to regulate my conduct in future.

I hope your lordship will take the several circumstances I have stated into consideration—if guilt, my lord, consists in the mind, I solemnly assure you that I have examined my heart, and find that it perfectly absolves me from any criminality of intention ; I have only then to inform your lordship that a heavy fine would be tantamount to perpetual imprisonment, and long imprisonment little short of death ; yet whatever punishment you may please to inflict, I trust I have sufficient fortitude arising from my sense of religion, and of the sacred cause for which I suffer, to enable me to hear it with resignation.

MR. JUSTICE DOWNES then proceeded to pass sentence upon the prisoner.

He told the prisoner he had listened to him with patience, that nothing had fallen from him to induce a mitigation of punishment, except what he had stated of the length of time he had been in confinement, which he would not forget in the sentence ; as the time of the imprisonment should commence from the day of the arrest. That with respect to the libel having been published without his immediate knowledge, if this were an excuse, which it was not, no evidence of the fact had been laid before the jury.

MR. JUSTICE DOWNES then continued—Sir, in scornfully declaring that guilt or infamy was attached to assisting the discovery of guilt, you have affected a false spirit ; and you have proved that the government would have afforded you mercy, which your libel asserted it was

not in their nature to give. You say there were documents which would have substantiated the facts. It would be monstrous indeed, that a printer should take upon him to determine, what were sufficient documents to justify his censure of the government. The publication is a most atrocious libel on the administration of justice in all its branches. If the verdict had been as you have stated, and that the learned judge had reason to suppose that it was the result of perjury and intoxication, he would, from his nature, have delighted in recommending the unfortunate man as an object of mercy; and surely such recommendation would have been attended to. Your libel says, these facts were true, and that the Lord Lieutenant was acquainted with them. It is impossible if they were true, and that they had come to the knowledge of the chief-governor, and that the person was a proper object of mercy, pardon would not have followed, for there is no man whose heart is so steeled against mercy and humanity, as to have refused it.

It also says, "if Mr. Orr was guilty, what was his crime? It was administering an oath of love and charity. If it was an oath of extermination he would have found mercy." What? Say that it was no crime the administering an unlawful oath, when from such oaths the present unfortunate state of the country springs? It was an oath binding the taker to be a member of a society formed for seditious purposes, whose end has on many occasions appeared in evidence subversive of order, and promoting an attachment to the enemies of the country. Your sentence is—"That you be imprisoned for two years from the day of your arrest; that you stand in the pillory for one hour; pay a fine of twenty pounds, and at the expiration of your confinement give security, yourself in five hundred pounds, and two sureties in two hundred and fifty pounds each, for your good behaviour for seven years.

SATURDAY, December 30.

This day Mr. Peter Finerty, pursuant to his sentence, stood one hour in the pillory opposite to the sessions-house in Green-street. An immense concourse of people attended this exhibition. Mr. Finerty was accompanied by some most respectable citizens. He appeared contented and resigned; and upon being released from the restraint of this governmental engine for securing the liberty of the press, he addressed the spectators in a few words—"My friends, you see how cheerfully I can suffer; I can suffer anything provided it promotes the liberty of my country." Upon this the spectators applauded by clapping of hands, the most marked silence having prevailed until then. Some of the guard who attended being, it is supposed, the picked-men of the Armagh militia, attacked the unarmed people. Some of the officers also were guilty of similar conduct; others, both officers and privates, acted like gentlemen and soldiers. Sheriff Pasley on this occasion conducted himself with perfect propriety. The conduct of the people was peaceable and exemplary.

REPORT
OF THE
TRIAL OF PATRICK FINNEY,
UPON AN INDICTMENT FOR
HIGH TREASON,
BEFORE THE
HON. JUDGE CHAMBERLAIN AND THE HON. BARON SMITH.

AT a Commission of Oyer and Terminer, held in the city of Dublin, in the month of July, 1797, an indictment was found against the prisoner, Patrick Finney, for high treason, when counsel and agent were assigned. After several adjournments, he was brought to trial on Tuesday, January 16, 1798. The indictment contained one count for compassing the King's death, and another for adhering to the King's enemies; and the overt acts, which were thirteen, laid in support of each count were the same. They are stated fully in the Attorney-General's opening speech. The prisoner pleaded not guilty.

Mr. RIDGEWAY opened the indictment.

Mr. ATTORNEY-GENERAL.—My lords and gentlemen of the jury, the prisoner at the bar stands indicted before you for high treason. Of treason, gentlemen, there are several species. He stands charged with two species: one is compassing and imagining the death of the King; the other is, adhering to the King's enemies—adhering to the persons exercising the powers of government in France, being at war with the King.

Gentlemen, the first species, that of compassing and imagining the death of the King, ought to be explained to you; that duty the court will, no doubt, fully discharge; I shall, therefore, content myself with briefly stating, that in order to bring the charge home to the prisoner, it is not necessary to produce evidence to show that he had it in his immediate design and contemplation to take away the life of the King. In our law, any act done that leads naturally, ultimately, or in its consequences, to destroying the royal life, is considered as an overt act to compass the death of the King. The preservation of the life of the King is necessary to the tranquillity of the state: any attack upon that life, however indirectly, has a tendency to destroy that tranquillity, and the peace and prosperity of the subject whom he governs. As, for instance, if war be levied, though not for the purpose of destroying the life of the King, it has a tendency to destroy it; because he must resist that war, and thereby his life will be

endangered. Again, if conspirators invite the foreign enemy to invade the kingdom, it is settled law, that it is a compassing the death of the King, because his life must be exposed in resisting the enemy, if they invade the kingdom.

The other charge is for adhering to the King's enemies. The term itself sufficiently explains the nature of that crime. By enemies are understood those who are at war with the King; and any adherence to such persons, thus at war, constitutes that species of high treason.

Gentlemen, the law of this country makes it necessary that persons charged with treason, the highest offence that a subject can commit, shall be informed by the indictment of some act or acts upon which the charge is founded, in order that they may know how to prepare for their defence. The acts so to be disclosed by the indictment are called overt acts—acts which are to be plainly proved to you by legal evidence.

The charge here is, that the prisoner compassed and imagined the death of the King, and adhered to the King's enemies; but that is not enough, such is the care taken of the lives of the subjects. It is not enough to charge the offence generally, but the particular overt act must be set out, and it must be proved to enable the jury to find a verdict against the prisoner, and that he may come prepared with evidence to meet that fact, which is the ground of the principal charge.

Thus, gentlemen, you perceive that to support the charge against the prisoner, we must prove by sufficient evidence some one overt act laid in the indictment. If any one of those overt acts be established, you must find a verdict against the prisoner, though we fail in supporting all the others.

Gentlemen, in support of this charge, there are thirteen overt acts laid in the indictment. I shall briefly state them. The overt acts laid are the same in both counts of the indictment.

The first overt act is, that the prisoner became a member of a society formed for the purpose of assisting the French in case they should invade this kingdom, and that he did meet with other false traitors to deliberate upon the means of effecting that purpose. I will not consume time by minutely observing upon each overt act; there is no man so dull as not to understand this overt act: to encourage the King's enemies to invade the kingdom is a proof of adhering to the King's enemies.

The second overt act is the same in substance with the first. The third is, that he consulted and agreed with others to send one or more persons into France as agents, to invite the persons exercising the powers of government there to invade this kingdom. The fourth is for collecting sums of money to pay the agents who were or should be sent into France—to pay and maintain persons who should be seduced from his Majesty's forces, and persons charged with crimes and confined in prison.

The fifth is, sending four persons to France to invite the French to invade Ireland, and to aid them when they should arrive. The sixth is nearly the same with the other, to raise money. The seventh is, that the prisoner consulted with others to raise and levy war and rebellion within the kingdom. The eighth is, that he met forty-eight persons, and consulted with them upon the means of attacking the

King's ordnance stores in the Castle of Dublin, and to seize upon the arms there deposited; and appointing certain persons to view three particular places, mentioned in the indictment, adjoining to the ordnance, in order to consider and report where they were proper places for making such attack. Gentlemen, to state this overt act is sufficient to explain, that it is evidence of treason in both counts—no words can make it stronger. Men assemble together, and do consult, and send some of their members to view the stores, and to consider where an attack should be made upon the stores, to enable the society to seize upon them, to make war upon the King, and to aid the French.

The ninth overt act is, that the prisoner did join with others for the purpose of aiding the French. The tenth is, that he did with others meet and agree to procure the French to invade this kingdom with ships and armed men. The eleventh is, that he did agree to raise insurrection, rebellion, and war within the kingdom. The twelfth is much of the same import; and the thirteenth is, that he did agree to support the French in case they should invade the kingdom.

You are now apprized of the charges against the prisoner, and the particular overt acts laid in support of those charges, some one of which must be clearly and satisfactorily proved to induce you to give a verdict against him.

It is now my duty to state the facts and the evidence that will be adduced to support the charge, and in doing so it is my intention to lay before you purely the evidence stated to me, and that without exciting your feelings in any respect whatsoever—careful not to excite yours, and anxious, I solemnly assure you, to suppress mine.

Gentlemen, it will appear that there did, last summer—I go no further back—exist in this city and kingdom a society styling itself a society of United Irishmen. This society was sub-divided into an indefinite number of societies. The members took an oath, upon their being admitted into any society, to keep secret, and not to give evidence against any of their brethren.

These societies, as they happened to grow numerous by the admission of members, divided themselves into what is called “splits,” consisting of twelve; and each society elected a treasurer and secretary. There were in every barony and certain other districts baronial committees, formed of the treasurers and secretaries elected by each particular sub-division, and of each barony and district, and to the baronial society or committee the sub-societies did make reports of their several transactions by their respective treasurers and secretaries, and receive through their secretaries and treasurers the orders of the baronial; from the baronial committees were formed county committees, to whom the baronial committees made their reports, and from whom the baronial committees received orders, and from the county committees provincial committees were formed, and so by gradation to a national committee.

If I am rightly instructed, it will still appear that the object of these societies was, and is, to subvert the constitution; and that the means intended to be used to effect this purpose were, to invite the French nation to invade this, their native country, to organize the people whom they should seduce to join them, and to seize the arms of his Majesty in the stores, provided for the defence of the kingdom.

Such is the general outline of this United Society. I come to the more minute particulars of the present case; and the facts which I shall state will appear throughout to be connected in every step with the statement I have made of the nature of the society.

A man of the name of James O'Brien, upon the 25th of April, 1797, was passing through Thomas-street, in this city; he met a man who was his acquaintance, named Hyland, standing at the door of one Blake, who kept a public-house. The prisoner at the bar, then, as I believe, a stranger to O'Brien, was standing at the door; Hyland asked O'Brien was he *up*?—which is, I presume, a technical expression to signify that a man is a member of the society. They tried O'Brien by the signs, whether he was, or not. They told him that no man's life was safe if he was not *up*; and, particularly the prisoner at the bar, told O'Brien his life would not be safe, if he were not *up*: they desired O'Brien to go into the house, in a room of which eight people were sitting. There, after some discourse, O'Brien was sworn to secrecy, and afterwards he was sworn to that oath which is called the oath of the United Irishmen. They talked much of their strength—of the number of men and arms provided in various parts of the kingdom, so great as to render the attainment of their object certain; and after much other discourse, which it is unnecessary to state, they adjourned their meeting to the house of one Coghlan, in Newmarket or the Coombe, to be held the next Sunday, the 30th of April; they agreed that the pass-word to gain admittance at Coghlan's should be "Mr. Green." And it appears (for the trade is attended with some profit) that O'Brien was called upon to pay, and did pay the prisoner one shilling for swearing him.

As soon as O'Brien left the house, and escaped the danger he imagined he was in, he went to Mr. Higgins, a magistrate of the Queen's County, to whom he was known, then in Dublin, and disclosed to him what had passed. Mr. Higgins told O'Brien he was right to reveal the matter, and brought him to Lord Portarlington, who brought him to one of the committee-rooms of the House of Lords, where he was examined by one of the Lord Lieutenant's secretaries. It was thought expedient, that attention should be paid to this society, seeing its dangerous tendency, in order to counteract the designs entertained. O'Brien conceiving that he might be in some danger from a society formed upon such principles, was advised to enlist in one of the regiments of dragoons then quartered in Dublin, and to attend the society to learn their designs. With this view, O'Brien attended at Coghlan's house, in New-market, and was admitted upon giving the pass-word, "Mr. Green." He there found the prisoner at the bar, with forty others assembled; he was desired to pay sixpence to the funds of the society; he said he had not then sixpence; they told him he was to return in the evening, and that it made no difference, whether he then paid or brought it in the evening. Finney informed him and the society that the money collected was to constitute a fund for the purpose of the society; that upon that day there was to be a collection from the united societies in Dublin, sixpence from each man, and that there was to be collected that evening from the various societies, 10,000 sixpences; and he further informed them (for he was an active man at that meeting) that there

was to be a great funeral, that of one Ryan, a mill-wright, whose corpse lay at Pimlico, which was to be attended by all the societies in Dublin; that after the funeral, that particular society was again to assemble at the same place, Coghran's.

Gentlemen, O'Brien did, according to the directions he received, attend the funeral of Ryan, at Pimlico, and at the funeral the prisoner was most particularly alert and active, and marshalled the persons who attended it. The witness will inform you of their numbers; they appeared to him so great that he (to use his own expression) never before saw the like. He attended the funeral through several streets, but apprehending that an attack would be made by the military to disperse them, he took the first opportunity to retreat. In the evening he attended, he returned to Coghran's; he had in the meantime seen his wife, and procured sixpence from her, and paid it upon the table, upon which he saw considerable sums, gold, and silver, and bank notes. He saw other members bring money from the other societies, and the prisoner was particularly active in collecting the money and in guiding the business of the meeting.

At this meeting, it will appear that the prisoner openly read an account of arms, and money, and men, that were provided by the societies, and he then informed the society that the French were to land in Ireland, and were to be joined or aided by the societies; some other particulars, too minute to mention, and the meeting adjourned to the 7th of May, to assemble at Tuite's, the "Sheaf of Wheat," in Thomas-street, and the pass-word was to be "Captain Flail." O'Brien went to Tuite's on the 7th of May, and was admitted on giving the pass-word; and there, he will inform you, he found the prisoner acting as secretary. There were present sixty persons—their number was so great that, according to the policy of their institution, they determined to divide themselves into five splits, and they elected treasurers and secretaries for each—the prisoner administered what I may call an oath of office to the persons so elected treasurers and secretaries.

At this particular meeting you will find the prisoner particularly active. Here, at his desire, four members then present were appointed to examine three particular places contiguous to the ordnance stores, and to see whether they were places from which an attack might successfully be made upon the stores. This meeting adjourned to the ensuing Sunday—for Sundays are the days chosen to carry on this blessed work. That particular split of which O'Brien was a member, appointed to meet at Halfpenny's, in Newmarket; and there that split did meet accordingly upon the 14th of May. At that meeting reports were made by several members that they had reviewed the three places contiguous to the arsenal, pointed out at the meeting at Tuite's, and that they found them proper places for making the intended attack; and from that meeting that particular split adjourned to meet at the house of one Archbold in Skinner's-alley. There they were to meet the ensuing Sunday, the 21st of May. Accordingly they did meet upon that day, and there Finney was present: Halfpenny, who was one of the officers of this particular split, read a state of the forces and arms. And upon the next day, 22d of May, O'Brien, the secretary of his split, and thereby privileged to attend the baronial meeting,

was introduced by Finney, and did attend the baronial meeting in King-street. At this baronial meeting there did attend forty-four members, delegated from the various societies within the barony or district to which that committee belonged. There O'Brien was brought, and introduced by Finney, they having given the pass-word, which was "Mr. Herring." There he was sworn into office, and there the secretaries from the various societies did deliver in verbally an account or statement of their societies and of their numbers, and Finney made an entry or memorandum of the several reports thus made by the officers of the sub-societies to that meeting; and to this baronial committee sums of money were brought and delivered to the prisoner and a person named Fox. Much conversation passed at this meeting. It will appear, as applicable to two of the overt acts, that Finney did declare the purpose for which the money was collected;—he did state that four persons had been sent into France from the society of United Irishmen, for the purpose of inviting the French to invade this kingdom—that two of these persons had returned—that the remaining two had continued in France, in order to attend the French when they should invade this country, and that the money was collected for the purpose of paying the expenses of those agents, thus stated by him to have been sent into France, and to maintain the persons who should desert from the King's troops, and the members of the society imprisoned under charges of having committed offences against the laws. He did assure the persons surrounding him very solemnly of the truth of his statement; and in order to procure further credit to a statement so important, he called upon Fox to make oath of the truth of it; and Fox did thereupon swear to the truth of what Finney had informed them—that emissaries had gone to France, and that the French were to invade this kingdom, and that he had this account from another, who swore to its truth; and further, with a view to the attainment of this object, he did state, that two vessels had arrived from France with arms, to arm the people, members of these societies.

Gentlemen, I have stated that the baronial meetings are inferior to the county meetings. It will appear that, at this meeting, the members present were informed, that they would not meet upon the next Monday, which I suppose was generally the day appointed for the baronial meeting, for that a county meeting was to be had upon that day, and therefore the baronial meeting must stand over to Tuesday. Accordingly they agreed to meet at the house of Mrs. White, in Meath-street, and the pass-word was "Mr. Patrick." The particulars of that meeting will come better from the mouth of the witness. It will appear that some inquiry was made respecting the place of being supplied with constitutions and other papers. Places were mentioned where to apply, and a person of the name of Jackson, a founder in Church-street, was mentioned, as being furnished with abundance of them, and that they would be delivered there to persons qualified to receive them. It will appear that a proposition was made at this meeting, and debated, for assassinating all persons who should give information against members of these societies.

However, before this meeting broke up, a peace-officer, who had information through the means of O'Brien of the meeting at this

place, came for the purpose of apprehending the conspirators there assembled. O'Brien had communicated the pass-word to the magistrate. The woman of the house, or the waiters, perceived the approach of the officer and those by whom he was attended, and a suspicion was entertained of the intention to arrest the persons assembled. The waiter came into the room and said there were strangers about the place, and cautioned them to take care of themselves. Finney called upon the other members to deliver their papers to him, which they accordingly did, and he left the room before the officer entered, and he had the good fortune to escape with the papers. The peace-officer and Major Sirr, town-major, arrived immediately after, and found everything according to the information which O'Brien had given. They arrested the persons there assembled. Finney had escaped; but that escape has, contrary to what he expected, tended only fully to confirm the account given by O'Brien. In a day or two after, Finney appeared in a public-house in which were two soldiers; one, a corporal of the Kildare militia, of the name of Thompson, the other of the name of Clarke: one of these persons only survives; he will give you an account that in their presence Finney boasted of his cleverness, or good fortune, in escaping from the meeting at which his companions were arrested, and that he carried off the papers. One of these men, Thompson, immediately went to the picquet guard, and brought them to the house where Finney was, and had him arrested; thus from Finney's mouth the whole evidence which had been given by O'Brien was confirmed. Finney was arrested in the month of May last; that he has not been tried before is not to be imputed to the crown; we were ready to try him, but he postponed his trial from time to time; but I will say no more upon that subject.

We will produce O'Brien, Major Sirr, Lord Portarlington, and Clarke, the soldier of the Kildare militia. We cannot produce corporal Thompson; he made his examination of the facts I have stated; he cannot give evidence of facts—he has been since assassinated; such, briefly, is the evidence that will be offered to you. You have an awful and a sacred duty to discharge: yours is the duty which will decide upon that man's life; and the court is engaged in the same duty in another respect. We, even we, who are in this humble station, I mean the counsel for and against the prisoner, are engaged in some degree in the discharge of the same duty. It is our duty, for the crown, to lay the case fairly and clearly before you. It is the duty of the counsel for the prisoner to see that the man charged with this atrocious crime shall have a fair trial, and if he be innocent, that his innocence may be made apparent. It is not our duty or desire to have innocent men found guilty; and, I am confident, it is neither the duty nor the wish of the counsel for the prisoner, if he be guilty, that he should escape. The counsel for the prisoner surely must have the same wish with ourselves—that, for the safety of the state, the guilty shall be found guilty; and for the sake of the prisoner, if innocent, that he should escape. It is far from them to wish that the guilty should escape, as it is from us, that the innocent should be found guilty.

You, gentlemen, have, I say, a sacred duty to discharge—you will not be led from the faithful discharge of that duty, either by an abhorrence of the crime, or a tenderness to the criminal. You will do your

duty to the state and to the prisoner. It is of the last consequence to the kingdom, and to every individual protected by the laws, that a crime of this nature should not go unpunished; your hearts will inform you, that the enormity of the crime ought not to affect your minds in considering the prisoner's guilt. We will call our witnesses, and it must be a satisfaction to every mind to feel, that cool and impartial justice will be administered between the crown and the prisoner upon this important occasion.

James O'Brien sworn.

Q. Do you recollect the 25th of April last? A. I do.

Q. Do you recollect being in Thomas-street? A. I do. Passing through on the 25th of April, I met a man of the name of Hyland at the door of one Blake, a publican.

Q. Did anything pass, and what, between you and Hyland? A. I had a slight knowledge with him three months before, through friends from the same place. He asked me did I hear from the country?

Q. Was there any person present, or in hearing, at the time Hyland spoke to you? A. There was.

Q. Do you know a person of the name of Patrick Finney? A. I do; I knew him that day, and since.

Q. Look about, and say if you see him? A. That is the man (pointing to the prisoner).

Q. Point him out to the jury? A. That is the man; he knows me well.

Q. He was present, and within hearing, when Hyland spoke to you? A. He was.

Q. What did Hyland say? A. He made signs which I came afterwards to understand.

Q. What did he say after he made the signs? A. "It is a wonder you are not up, James!"

Q. Was that in the hearing of Finney? A. It was.

Q. What passed, or was any observation made by any person upon that? A. There was.

Q. What was it? A. I asked him the sense of being up, for I did not understand it.

Q. What was said then? A. Finney immediately told me, the sense was to become a United Irishman, or if not, I might lose my life before I went half a street.

Q. Was there any proposal, and what, then made to you? A. I told him I did not understand him; he told me to go into the house, Blake's, and I should know the particulars.

Q. Did you go in? A. I did.

Q. Was there anybody but Finney in the room into which you went? A. There was; there were ten when I went in. There were two men I have since come to learn their names.

Q. What happened towards yourself after you went into the room? A. A man of the name of Buckley asked Finney—"Have you caught a bird?" "Yes," said Finney. Then, said Buckley, "He shall never leave this until I make a Christian of him." Then, said he, "Do you, Lewis, mind that door, and I will mind this."

Q. What passed then ; was any oath administered ? A. There was.

Q. By whom ? A. Hyland told me, that I should take an oath, not to discover anything that passed, or to give evidence against any one there, and then I would be further enlightened.

Q. Was there any oath administered by the prisoner ? A. There was afterwards.

Q. Who swore you first to secrecy ? A. Hyland did.

Q. Was there any other oath administered ? A. There was.

Q. By whom ? A. Hyland laid the book upon the table, and said, turning to Finney—"I cannot repeat the test oath off—if not, you have a printed one about you." Finney then drew out a printed paper, and Hyland said—"Do you repeat after me," and I was sworn.

Q. Can you tell the purport of that oath ? A. As nearly as I recollect, I will tell it.

Q. Do so. A. The purport of the oath to which he swore me, as well as I can recollect, was—"that I should persevere to endeavour to form a brotherhood of affection among Irishmen of every religious persuasion ; and persevere to endeavour to gain a full, equal, and adequate representation of all the people in Ireland."

Q. Was there any more ? A. There was : "That neither fears, hopes, rewards or punishments should ever induce me directly or indirectly to discover on, or give evidence against him, them, or any other similar societies for any act or expression of theirs done or made collectively or individually, either in or out of this society." That I believe finished it.

Q. After this, did you get any information with regard to the signs ? A. I was told by the prisoner after the oath, that every person, whether poor or rich, that was not a United Irishman, would lose their lives.

Q. Pray, now, O'Brien, what was it induced you, or did you take that oath voluntarily or from apprehension ? A. He learned me the signs, that I might make myself known.

Q. Did you take the oath voluntarily, or from fear ? A. I did it from fear of the words he said, when he was joined by every one in the room, and they had got, one to one door, another at another—yourself might be afraid if you were there.

Q. Did you pay any money there ? A. I did.

Q. To whom ? A. I paid a shilling to the prisoner ; he said that was the rule for every man sworn, to subsist the cause.

Q. Were there other meetings appointed ? A. There were ; after Finney catechised me in the signs and words—I shall mention them if you choose : he told the challenge was, to draw the right hand across the left breast ; and the answer was, to put the left hand upon the right wrist, then two words were spoken—"go on ;" and the answer by the opposite person was—"to what ?" the person replied—"to Truth, Union, and Liberty ;" then the right hand was offered by one person, and the left given by the other—then they shook hands.

Q. After this, was there any day appointed for a future meeting ? A. He said we should meet to be further enlightened in the business at the widow Coghnan's, 47, Newmarket on the Coombe, corner of Fordam's-alley.

Q. Pray, did you get any token, or word, by which to get admission ? A. He told me to go at six or seven in the evening, and to

ask—"Is Mr. Green here?" and I would be admitted to the United Irishmen, or Brothers, who were there.

Q. Was there any conversation about their strength, number, or arms? A. There was, at Blake's, in Thomas-street.

Q. When you were sworn? A. There was a printed paper, the sense of which was, that all placemen and pensioners, not United Irishmen, were to lose their lives.

Q. After this had passed what did you do on that day? A. After it had passed, I went home to my own place first; and I could remember through my recollection and understanding to hear of people being taken as "Defenders," and in that line, and I immediately set my opinion that I had better discover what had happened to me.

Q. Did you discover? A. I did.

Q. To whom? A. To Captain Higgins, a magistrate, who is acquainted with me.

Q. What county gentleman is he? A. Queen's County,—from Mountmellick. I went to him at Mr. Prendergast's, where he was; I do not know what street, but one leads into Golden-lane.

Q. (By the Court.—What countryman are you? A. Queen's County.)

Q. What did Mr. Higgins advise you to do? A. When I apprised him of the speeches —

Q. (Mr. McNALLY.—Was Mr. Finney present? A. No.)

Q. Where did Mr. Higgins bring you? A. He brought me to Lord Portarlington.

Q. Were you brought anywhere afterwards? A. I was not brought anywhere—I walked voluntarily.

Q. Where did you go to? A. We went to Lord Portarlington's house, and he went with us to the Parliament-house, where I told what had passed.

Q. (By the Court.—What do you mean by telling what passed? A. I told him what had happened at Thomas-street—my being sworn in, and the declarations that were made of the placemen losing their property, if they were not United Irishmen.)

Q. You enlisted in some regiment of dragoons afterwards? A. I did, in the 9th regiment of dragoons, for my own protection.

Q. With what colonel? A. Colonel Henniker.

Q. How soon after you were sworn? A. The day after, because I did not know what to do; I recollected Hanlon's having given information against some persons, and that he went into the artillery, who protected him; and I determined in my own breast to enlist, and that I would have the protection of the regiment.

Q. You talked of an appointment for the Sunday after? A. There was. I made known at the Parliament-house something of the funeral and the great meeting, and was asked whether there was anything in the coffin?—I said I could not tell.

This examination was objected to by the counsel for the prisoner.

Q. Did you go anywhere upon the Sunday after? A. I did.

Q. Where? A. To Coghnan's, Newmarket upon the Coombe.

Mr. CUBBAN.—I do not know that the learned counsel is aware that Newmarket is in the county of Dublin;—I understand that the entire market is in the county of Dublin. This indictment is in the

city; and it needs not any information or assertion from me to satisfy you, that until an overt act be proved in the city, you can give no evidence of what passed in the county.

Mr. PRIME-SERGEANT.—Then I will postpone for the present what passed in the county.

Q. You gave me an account of Thomas-street. Do you know the "Sheaf of Wheat?" A. I was there the Sunday after I was at New-market, Sunday the 7th of May.

Q. Was any word given to introduce you there? A. "Mr. Flail."

Q. Now tell me what passed there. A. I got in upon the word "Mr. Flail."

Q. Did you see the prisoner at the bar at that meeting? I did see him at the meeting, and when the meeting closed.

Q. Were there many persons there? A. There were sixty men in the room.

Q. (By the Court.—Whose house was it? A. Tuite's.)

Mr. CURRAN.—I wish Mr. Prime-Sergeant to mention the particular overt act to which he applies this evidence.

Mr. PRIME-SERGEANT.—That must be done by those who speak to evidence, or by the court. I produce the witness to prove every individual overt act in the indictment, and if the statement be founded, he will certainly prove them.

Mr. CURRAN.—There are thirteen overt acts in the indictment. After the last objection I made, the court will see with what view I interfere now, and how necessary it is we should know what act this witness comes to prove.

Mr. PRIME-SERGEANT.—I declare that from the informations I have of this man he will prove them all. It will be for the court and the jury to apply to the evidence.

Q. Was the number of the persons counted? A. I counted them.

Q. Did anybody else? A. Finney, and Tom Cooke a yeoman, who is not here.

Q. Was anything said upon that? A. It was advised between them both that there being too many they should be divided into splits.

Q. (By the Court.—Who proposed it? A. Finney, as secretary of the meeting, and Cooke, as chairman or president.

Q. Do you say that Finney was secretary of the meeting? A. He was secretary, my lord.)

Q. You said they were divided? A. There was a sheet of paper got in, and number one to sixty put in it, and it was cut up in pieces and thrown into a hat, and every one drew, and each man was to follow the split of twelve that he was to draw.

Q. What number did you draw? A. I drew thirty-eight.

Q. (By the Court.—I suppose there were sixty tickets put into the hat? A. There were; that was to determine what split a man should belong to; he was to fall into whatever twelve he should draw.)

Q. Was there any officer elected for each split? A. There was; there was a room hard by into which every twelve went until they elected a secretary and cash-keeper, which left ten members.

Q. (By the Court.—Did they go into the room? A. I went in with my own split.

Q. Did they go in in the order of their numbers? A. I do not know of any but my own split; I cannot tell what passed while others were there.)

Q. Did you elect a secretary and cash-keeper? A. We did.

Q. What was done after that? A. We came into the large room all together.

Q. The whole sixty? A. Yes.

Q. What happened there? A. The secretaries that were elected were ordered to attend their meetings, and have candle-light near the door, that if a stranger came they might know him, lest any one should impose himself upon their meeting.

Q. After the election of secretaries and cash-keepers, was there any oath administered, and by whom? A. The five secretaries and five cash-keepers were ordered to sit near the chair, by the prisoner; the five secretaries were sworn to the secretary's oath, and the five cash-keepers to the treasurer's oath.

Q. (By the Court.—By whom? A. By Finney and Cooke, who afterwards raised a glass of punch and said—"wash it down with this.")

Q. Can you tell the oath? A. I believe I can, a part of both:—"that as long as he held the office of secretary, he would not give any papers, copies, or documents to any man not part of the split."

Q. What was the oath of the cash-keeper? A. "That he should not embezzle or put astray any of the cash given him in charge, but to make a just return to the baronial meeting."

Q. After all this had passed, swearing and washing down, do you recollect any conversation about White's-court? A. I do very well.

Q. What was it; tell the court and the jury? A. Cooke struck the table with a carpenter's rule he had, and called to order—every man to keep silence. When every man kept silence, "gentlemen," said he, "I have one thing to disclose, with your leave," turning to Finney—Finney said, "there was time enough"—so Cooke said, "it must be disclosed now—you must all go," said he, "as you know your respective times of meeting, to White's-court, in Ship-street; to No. 48, George's-street, and the stone-cutter's yard in the same street, round from Stephen-street."

Q. Was it told for what purpose? A. The business was introduced in the purpose of viewing these places, to see how they could get into the back of the ordnance stores, to rob it of arms and stores, ball and powder, without loss of blood, as they did not like to face the guards.

Q. Who said this? A. Both Finney and Cooke.

Q. Was there any objection made to that proposal? A. None that I heard.

Q. Was it agreed to? A. Every man was asked to put out his hand, which he did.

Q. Was it appointed that you should meet again? A. The secretary and cash-keeper of the split I was allotted in, said we were to meet at Halfpenny's, at New-market on the Coombe.

Q. For what time? A. The Sunday after.

Q. (By the Court.—What was his Christian name? A. Ignatius: he was our secretary.

Q. Secretary of your split? A. Yes, my lord.)

Q. You met them? A. I went to Halfpenny's the Sunday after, and I would not be let in without the word.

Q. (By the Court.—Was there any signal? A. The pass-word was "did the wool-pack pass by," they being mostly broad weavers.)

Mr. CURRAN.—Are you going to give evidence of what passed at Halfpenny's?

Mr. PRIME-SERGEANT.—I am.

Mr. CURRAN.—My lords, as to the law there is not the least doubt. It is clearly settled, that unless an overt act be proved in the county where the indictment is laid, the prosecutor cannot go into evidence in a foreign county. There can be no doubt of that: we have the books in the court, and can read passages to that effect. The only doubt is with regard to the application of the rule here. I am to contend, that there is not evidence for a jury of any overt act of high treason in the city. There cannot be evidence of an overt act, unless the evidence, if believed, would be sufficient to convict. What is the evidence here? He has stated a meeting, and a proposal to see whether there might not be a robbery committed upon his Majesty's stores, without bloodshed, and without opposing his Majesty's forces.

Mr. Justice CHAMBERLAIN.—We will give an opinion, if forced to it; but after the statement of the counsel for the crown, they can be under no difficulty in going further, and postpone this part for the present.

Mr. SOLICITOR-GENERAL.—In Lord Preston's case, the only act proved was taking boat at Surrey-stairs, and that let in evidence of what passed in Middlesex.

Mr. BARON SMITH.—We have so much in prospect that the less time there is wasted in argument the better.

Mr. PRIME-SERGEANT.—I shall go to another overt act.

Q. Do you recollect being at Skinner's-Alley, at one Archbold's? A. I do very well, the Sunday after.

[Here it was objected that Skinner's-alley was also in the county.]

Q. Do you know North King-street? A. I was there.

Q. Was Finney there? A. He was the man brought me there

Q. Do you recollect how soon after you left Archbold's? A. It was the Monday evening following. He scolded the secretary and cash-keeper there for admitting me, without administering an oath to me upon my election.

Q. Was any account returned? A. There was. Finney swore me to the cash-keeper's oath, and one Hyland to the secretary's.

Q. Tell what was done? A. After I was sworn, every secretary and cash-keeper should answer according to their number, beginning at twenty-one. The secretary was asked the number of men, and Finney made an entry in the book of the cash and the numbers; and when a member swore in a man, he was to give an account what he belonged to, and the number of men —

Q. (By the Court.—What number of men? A. The number of men that each secretary and cash-keeper had under them, for this was a baronial meeting.)

Q. This was a baronial meeting? A. It was—of secretaries and cash-keepers.

Q. There was an account given of each and the number of men? A. There was, and of arms.

Q. Who received the cash at the meeting? A. Finney did.

Q. Was there any and what conversation, with regard to the purpose for which the money was received, and by whom? A. There was.

Q. By whom, and what was it? A. There were forty-five men in the room, secretaries and cash-keepers—every two men answering one number. Finney was asked the purpose to which the cash was to be applied. He answered, to pay the men, as they had done before, to go to France.

Q. For what purpose? A. For the purpose of letting the men in France know the state of the men in Ireland, and of their intention to join them at their landing.

Q. (By the Court.—There was a return of men and arms, did you say, at that baronial meeting? A. There was a return of cash by each cash-keeper, which was paid over to Finney, and there was a return of men and arms.)

Q. What further did he say about the persons being sent into France? A. He told me that he got information that day—he told the whole meeting as well as me—that two of the four, who were last sent into France, had come back, and that the French would certainly come again, and that the other two remained to come with the fleet.

Q. Was there any county meeting mentioned that day? A. There was.

Q. Who mentioned it? A. Finney did. He told us, they could not meet on the Monday, but might on Tuesday, as he was obliged to attend a county meeting.

Q. (By the Court.—Were the baronial meetings on Monday? A. The one I sat in was upon Mondays, another met upon Tuesdays.)

Q. Was there one Fox at that meeting? A. There was.

Q. Did he say anything in the presence of Finney? A. Finney had mentioned the use of the money, for deserters, and persons in gaol, and the return of the two persons from France; and then he called upon Fox, and asked him if it was not true. Fox took a book out of his pocket, and swore it was true, as it was sworn to him by another man the same day.

Q. Was there any further meeting appointed? A. There was.

Q. For what day and place? A. Tuesday eight days.

Q. What place? A. Mrs. White's, 44, Meath-street, and the pass-word was to be, "is Mr. Patrick here." She kept the sign of St. Patrick, and it was thought the members would not forget the word, when they looked at the sign.

Q. Do you recollect anything else to have been said by Fox in the hearing of Finney? A. That every person wanting constitutions or returns was to call at Fox's place, 18, or 19, Hammond-lane, and he would supply them.

Q. Did you ever call upon Fox in consequence of that? A. I did.

Q. Tell what passed? A. I went up stairs to where he lived:

he brought me to a back yard, and from a hole in the wall he took out papers, which he showed me, that I might give a copy of it.

Mr. M'NALLY.—I hope the counsel for the crown do not mean to give parol evidence of these papers.

Witness.—I took the paper, and had it till Cooke took it from me.

Q. He gave you a return and a constitution? A. He gave me a return, and the constitution was somewhat blotted, and I asked for another; he said he had not another till we should go to Jackson's, in Church-street. We went there, and saw a tall man in brown clothes, with a black sallow complexion. He gave Fox twelve, and he gave me one.

Q. (By the Court.—What do you call a constitution? A. A book having the test oath, and the secretary's oath, and the cash-keeper's oath, and the rules of the society.)

Mr. PRIME-SERGEANT.—My lords, I now go back to the county of Dublin, and hope the intimation from the court will have the effect intended.

Mr. Justice CHAMBERLAIN.—Have the counsel for the prisoner any objection to their going to this evidence?

Mr. CURRAN.—I have, my lords; and wish to know whether the witness be done as to the parts he has testified, that he may not, after my objection, supply anything, by saying he omitted any expression, which he forgot.

Mr. Justice CHAMBERLAIN.—We do not give any opinion upon the law now; but we wish for the sake of perspicuity that you would finish in the city.

Mr. PRIME-SERGEANT.—I have no objection to accommodate the court; but it may be drawn into example hereafter.

Mr. Justice CHAMBERLAIN.—You must then support your objection, Mr. CURRAN.

Mr. CURRAN.—My lords, there is no doubt as to the law, that an overt act must be established in the county where the indictment is found, before evidence of an overt act in a foreign county can be received. I take it to be clear law, that some overt act must be clearly proved, if the evidence be credible, in the proper county, such as would completely establish an overt act in the indictment. See what the evidence is: the only overt act to which the evidence can apply, is that of levying money to send persons into France to invite the French to invade this country. There is evidence of an overt act of treason to give material information to an enemy at war. There is no occasion to cite cases. Hensey's case is directly in point. Preston's case is in point. Therefore, my objection is this, that the evidence given is evidence of a distinct kind of overt act, an established overt act of treason, clearly known to the law. The overt act in this indictment is, that the prisoner levied money to send messengers to France to invite them to invade this country; the evidence is not that, but that messengers had been sent in consequence of a previous determination on the part of France to invade this country; alluding to the notorious event of their coming to Bantry Bay.

Mr. PRIME-SERGEANT.—Do your lordships think it necessary for me to say a word?

Mr. Justice CHAMBERLAIN.—We are of opinion, that there is evidence to go to the jury, and unless there be no evidence, Mr. Curran himself admits that his objection falls to the ground. We think there is evidence of the several overt acts, and particularly of the first—that the prisoner associated with others under the denomination of United Irishmen, with design and for the purpose of aiding and assisting the persons exercising the powers of government in France, in case they should invade this kingdom. Now we think there is evidence, if credited, to support that. Here are oaths proposed—a society is formed: clearly, the purpose of this society is inquirable into; and the same witness discovers at subsequent meetings that they had sent persons into France, to inform the French of the state and number of persons inclined to assist them, and ready to join them. Is not this evidence to go to a jury to show the purpose of this association, if the jury believe it? Then there is evidence in the city of Dublin of a plan to attack the ordnance stores. Is it not for the jury to inquire for what purpose that attack was to be made; and may it not be coupled with the expressions of the prisoner, that persons had been sent into France, and some of them had returned? The jury, coupling the forming of the association with the plan to attack the ordnance, are to see whether all this was done for the purpose laid in the indictment, of adhering to and assisting the French if they should land. I do not say what the jury will intend upon this evidence, but I think they may intend that these proceedings were for the purpose of assisting the French.

Mr. Baron SMITH.—It is sufficient for me to say, that I entirely concur in the opinion delivered by Mr. Justice Chamberlain.

Q. You told me that you got into Coghran's by the word, "Mr. Green." Where is Coghran's? A. No. 47, Newmarket on the Coombe.

Q. You got in by the word "Mr. Green?" A. I did, by asking "is Mr. Green here?"

Q. Was the prisoner there? A. He was.

Q. (By the Court.—This was the Sunday after you were sworn? A. It was Sunday the 25th of April.)

Q. You were admitted? A. I was admitted up stairs, and Finney introduced me to the men there as a true man and a brother—that he had sworn me himself.

Q. What happened there? A. He asked me for sixpence; I told him I had it not; he told me to go to Pimlico that evening, and that 10,000 United Irishmen were to walk after the funeral of Michael Ryan, and that every man of them was to pay sixpence. They were to walk to show government their strength, and what they were.

Q. Did you go to that funeral? A. I went home first and procured some money, and then went to the funeral. I walked as far as the Castle-gate, and the guard being coming, I was afraid I might be killed as much as any man that deserved it, for I was all that time giving information.

Q. Was the prisoner there? A. He was—he was making us walk four deep; and afterwards he was making us walk six deep.

Q. (By the Court.—You walked four deep? A. We did, four in a breast.

Q. Who made you walk that way? A. Finney; and after he saw the crowd too throng, he made us walk six deep.)

Q. You went home? A. I did, and got some money, and went to Coghnan's, and got in upon the word, after the corpse was interred. Finney introduced me as before, that I was a true man and a brother, for he had sworn me himself. Then he demanded sixpence from me, as every man at the funeral had paid sixpence for the good of the cause.

Q. Did you see any more money there but that sixpence? A. Undoubtedly I did, both gold, and brass, and paper—men were coming in and paying it, and he received it.

Q. (By the Court.—You saw notes and money? A. Notes and money, my lord.

Q. Received by him? A. Yes, brought in by different people and received by him.)

Q. Did he read anything at that meeting? A. He did.

Q. What was it? A. He read the constitution, the strength of men and arms in Ireland—I cannot recollect the strength of arms, but he told me there was 111,000 men in the province of Ulster.

Q. (By the Court.—You do not recollect the arms? A. I do not; but he said there were two ships arrived with arms and ammunition from France.)

Q. Was there any meeting appointed for a future day? A. There was.

Q. Where? A. Tuite's in Thomas-street.

Q. Was there any pass-word? A. There was—"Mr. Flail."

Q. Was there any meeting at Halfpenny's? A. There was.

Q. At that meeting was Finney present? A. He was not.

Q. You recollect what passed about examining White's-court and George-street, what was to be done afterwards? A. We were to see how it might be easy to get in without blood. What opinion we formed we were to communicate to the officers of each split, that they might report it to the baronial committee, and that they should report to the national committee.

Q. Did you report it accordingly? A. We did; and every one of the old split gave their opinion that it was a very good act, and could easily be done, except five new members that came in.

Q. Was there any other meeting appointed for any other place? A. There was.

Q. Where? A. At Archbold's, in Skinner's-alley—the pass-word was to be "Harp," because Halfpenny had a harpsichord in the parlour where he swore the five men, and played some tunes upon it; therefore the pass-word was agreed to be "the harp."

Q. What happened there? A. There were seven new members sworn, which made us twenty-four, and obliged us to have a split that day.

Q. Did you get any place in that split? A. I did.

Q. What place? A. I was voted cash-keeper of that split; I was only elected there, and was sworn in at North King-street at the baronial meeting. I told you that Finney had scolded Halfpenny for letting me come to the baronial meeting without being sworn.

Q. Was there any benefit annexed to the office of secretary or cash-keeper? A. They had.

Q. What was it? A. No other could go to the baronial meeting but secretaries and cash-keepers.

Q. Did you go there to be sworn in? A. No; I did not know that I would be sworn, but several of us went, and Finney, who was in a great-coat.

Q. (By the jury.—Was Finney present? A. He brought me from Archbold's to North King-street.)

Q. You recollect you said there was a meeting appointed at Meath-street, and the pass-word agreed upon was "Mr. Patrick?" A. I do; it was agreed that the meeting should not be till the Tuesday eight-days following.

Q. You went to that meeting? A. I did on the Tuesday eight-days following.

Q. How did you get in? A. There were two men on the stairs, and they both saw whether I was catechised, to see whether I knew the signs, although I had the pass-word—"is Mr. Patrick here."

Q. Was Finney there? A. He was.

Q. Was Cooke there? A. He was.

Q. Was there any debate? A. There was: Finney said as soon as they should all come in they should be sworn not to make use of the Christian names of one another, lest it might lead to a discovery.

Q. Was there anything said with regard to persons who should give information? A. There was.

Q. What was it? A. Cooke said, that any man who was only to be censured for giving information to government, should have his eyes plucked out, his hands cut off, and his tongue cut out.

Q. (By the Court.—What do you mean by censured? A. To suppose they were giving information against the party.

Q. His hands were to be cut off? A. They were—the way he could not write; and those who gave evidence for government were to be murdered.)

Q. Do you recollect any woman going into the room? A. No; but I recollect she sent her man in.

Q. What did he say? A. The man said his mistress had been looking out of the window and saw people watching about the house, and desired us to take care. Finney immediately desired every one to give up the papers: he got them all, put them into his bosom, and he and another went across the table and got down stairs.

Q. Did anybody come in, or were any taken? A. Every one of us were taken—sixteen.

Q. Who came in? A. Some gentlemen and guards.

Q. Tell the people who were taken. A. There was Cooke, Half-penny, Hartford, M'Cue, Molony, Flinn—I do not immediately recollect any more of them.

Q. Do you recollect who came in with the guards? A. I do.

Q. Who? A. Major Sirr and Captain Atkinson.

Q. Had you given any information to them? A. Not to Atkinson, but I had to Major Sirr and some other gentlemen.

Q. You recollect the meeting at Meath-street? A. I do.

Q. Was there any report? A. There was.

Q. By whom? A. By Finney—that there should be no explosion

among the United Irishmen until such time as the French should come either to England or Ireland, but they should continue to swear in as many as they could, and secrete all the arms and ammunition they should get.

Cross-examined.

Q. Pray, Mr. O'Brien, whence came you? A. Speak in a way I will understand you.

Q. Do you not understand me? A. Whence?—I am here—do you mean the place I came from?

Q. By your oath, do you not understand it? A. I partly *censure* it now.

Q. Now that you partly *censure* the question, answer it—where did you come from? A. From the Castle.

Q. Do you live there? A. I do while I am there.

Q. You are welcome, sir, to practise your wit upon me—where did you live before you came to Dublin? A. In the Queen's County.

Q. What way of life were you engaged in before you came to Dublin? A. I had a farm of land which my father left me, and I set it, and afterwards sold it, and came to Dublin to follow business I learned before my father's death. I served four years to Mr. Latouche of Marley.

Q. To what business? A. A gardener.

Q. Were you an excise-officer? A. No.

Q. Nor never acted as one? A. I do not doubt but I may have gone of messages for one.

Q. Who was that? A. A man of the name of Fitzpatrick.

Q. He is an excise officer? A. So I understand.

Q. What messages did you go for him? A. For money, when he was lying on a sick bed.

Q. To whom? A. To several of the people in his walk.

Q. But you never pretended to be an officer yourself? A. As I have been walking with him, and had clean clothes on me, he might have said to the persons he met that I was an excise-officer.

Q. But did you ever pretend to be an officer? A. I never did pretend to be an officer.

Q. Did you ever pass yourself for a revenue officer? A. I answered that before.

Q. I do not want to give you any unnecessary trouble, sir—treat me with the same respect I shall treat you. I ask you again, did you ever pass yourself for a revenue officer? A. Never; barring when I was in drink and the like.

Q. Then, when you have been drunk, you have passed for a revenue officer? A. I do not know what I have done when I was drunk.

Q. Did you at any time, drunk or sober, pass yourself as a revenue officer? A. Never, when sober.

Q. Did you, drunk or sober? A. I cannot say what I did when I was drunk.

Q. Can you form a belief? I ask you upon your oath, you are upon a solemn occasion, did you pass yourself for a revenue officer? A. I cannot say what happened to me when I was drunk.

Q. What! do you say you might have done it when you were drunk? A. I cannot recollect what passed in my drink.

Q. Are you in the habit of being drunk? A. Not now, but some time back I was.

Q. Very fond of drink? A. Very fond of drink.

Q. Do you remember to whom you passed yourself for a revenue officer? A. I do not.

Q. Do you know the man who keeps the Red Cow, of the name of Cavanagh? A. Where does he live?

Q. Do you not know yourself? A. There is one Red Cow above the Fox and Geese.

Q. Did you ever pass yourself as a revenue officer there? A. I never was there but with Fitzpatrick; and one day there had been a scuffle, and he abused Fitzpatrick and threatened him; I drank some whiskey there and paid for it, and went to Fitzpatrick and told him, and I summoned Cavanagh.

Q. For selling spirits without licence? A. I did, and compromised the business.

Q. By taking money, and not prosecuting him? A. Yes.

Q. Did you put money into your own pocket by that? A. I did.

Q. But you swear you never passed yourself for a revenue officer? A. Barring when I was drunk.

Q. Were you drunk when you summoned Cavanagh? A. No.

Q. When you did not prosecute him? A. No.

Q. When you put his money into your pocket? A. No.

Q. Do you know a man of the name of Patrick Lamb? A. I do not; but if you brighten my memory I may recollect.

Q. Did you ever tell any man that you were a supernumerary, and that your walk was Rathfarnham and Tallagh. A. I never did except when I was drunk; but I never did anything but what was honest when I was sober.

Q. Do you believe you did say it? A. I do not know what I might have said when I was drunk. You know when a man is walking with an exciseman he gets a glass at every house.

Mr. CURRAN.—I know no such thing, never having walked with an exciseman.

Witness.—Then you may know it.

Q. Do you know any man passing by the name or called Patrick Lamb. A. Not that I recollect, upon my word.

Q. Upon your oath? A. I do not recollect: I mean to tell everything against myself as against any other.

Q. Do you know a person of the name of Margaret Moore? A. Where does she live—is she married?

Q. She lives near Stradbally. Do you know her? A. I know her well: I thought it might be another. I was courting a woman of that name before my marriage.

Q. Did you come to Dublin before her or after? A. I was in Dublin before I knew her.

Q. Did you get a decree against her? A. I did get a summons for money she owed me.

Q. Were you taken to the court of Conscience by her? A. No.

Q. Never? A. Never.

Q. Did she pay you the money since? A. No: my brother and sister run a bill with her, and my brother gave a note, he being under age; and afterwards I took a house in Stradbally, and did not like making a noise before the neighbours, and paid her nine guineas.

Q. Was there any money refunded her by order of the court? A. I do not know; she lodged money for her security in the house where she lay, as a security for her return the next day.

Q. Were you summoned? A. No.

Q. Nor paid any money? A. No.

Q. Did she pay any money to any person? A. Do not I tell you she lodged money as a security until next day.

Q. When you met Hyland were you an United Irishman? A. Always united to every honest man.

Q. Were you an United Irishman? A. Never sworn.

Q. Were you in any manner an United Irishman before that day? A. Never sworn in before that day.

Q. Were you in any manner? A. Do not I tell you that I was united to every honest man?

Q. Do you believe you are answering my question? A. I do.

Q. Were you ever in any society of United Irishmen before that day? A. I do not at all know but I may, but without my knowledge; they might be in the next box to me, or in the end of the seat with me, I do not know them.

Q. Were you ever in any society of United Irishmen but that day? A. I was since.

Q. Were you ever of their meetings, or did you know anything of their business before that day? A. No; but I have heard of Defenders' business.

Q. Were you of their society? A. No; but when they came to my father's house I went to Admiral Cosby's and kept guard there, and threatened to shoot any of them that would come. One Connelly told me I was to be murdered for this expression.

Q. Hyland made signs to you in the street? A. He did.

Q. Did you answer them? A. No.

Q. Why did you not? A. Because I did not know how.

Q. Then is your evidence this, that you went into the house in order to save your life? A. I was told that I might lose my life before I went half a street if I did not.

Q. Then it was from fear of being murdered before you should go half a street, that you went in to be an United Irishman? A. You have often heard of men being murdered in the business.

Q. Do you believe that? A. I do; it is common through the country. I have read the proclamations upon it, and you may have done so too.

Q. How soon after you were sworn did you see the magistrate? A. I was sworn upon the 25th, and upon the 28th I was brought to Lord Portarlington, and in the interval of the two days Hyland was with me and dined with me.

Q. Why did you not go the next day? A. Because I did not get clear of them, and they might murder me.

Q. Where did you sleep the first night after? A. At my own place. I was very full—very drunk.

Q. Did either of them sleep there? A. No.

Q. Where did you live? A. In Kevin-street, among some friends, good to the same cause.

Q. Where did you see Hyland the next day? A. He came to me next morning before I was out of bed, and staid all day and dined. We drank full in the evening.

Q. What became of you next day? A. Hyland came early again and staid all day. I was after getting two guineas from my brother. I was determined to see it out, to know their conspiracies after I was sworn.

Q. Then you meant to give evidence? A. I never went to a meeting that I did not give an account of it.

Q. (By the Court.—To whom did you give information? A. To Colonel Henniker, Lord Portarlington, and Mr. Secretary Cooke, in the Castle.

Q. How soon after these meetings? A. I gave information before I went to Newmarket on the Coombe, that I was to meet there.)

Q. I wish you would recollect yourself as to Mrs. Moore; did you not swear that there was no re-hearing of a cause between you before a magistrate? A. You did not ask me that before.

Q. I ask you now? A. I believe there was between her and the bailiff.

Q. You were not sworn? A. I never swore an oath there. I was talking to a young man of the name of Kilbride —

Q. (By the Court.—What was the re-hearing about? A. She had let my brother and sister run in debt, and he passed a note, and that was hurting my credit in Stradbally, and I was obliged to take up the note.)

Q. You were not sworn? A. I was not.

Q. Did you get an order? A. I got an immediate summons without being sworn. She put an immediate summons upon the pillars of the Tholsel, not knowing where I lived, and when we came before the magistrate he tore them both.

Q. Did you say she was arrested? A. Indeed it was the bailiff humbugged me out of the money; I was not up to the tricks of Dublin that time.

Q. Was she arrested? A. I believe she was; the bailiff told me so.

Q. Do you know Charles Clarke, of Blue-bell? A. I have heard of such a man.

Q. You do not know him? A. I do: I do not mean to tell a lie.

Q. You did not know him at first? A. There are many men of the name of Clarke. I did not know but it might be some other. It did not immediately come into my memory.

Q. You thought it might be some other Clarke? A. There is a Clarke came into me yesterday.

Q. Did you ever get money from Clarke, of Blue-bell, as an excise officer? A. I got three and three pence from him not to tell Fitzpatrick. He did not know me, and I bought spirits there, and seeing me walking with an exciseman, he was afraid I would tell of him, and he gave me three and three pence.

Q. And you put it into your pocket? A. To be sure.

Q. Did Mrs. Clarke give you any money? A. Not that I recollect.

I got three and three pence between them. The husband gave me three and three pence.

Q. You said before he gave you three and three pence, that is settled. Did you get any afterwards from her? A. No; I got it from them both. He struck her for giving me spirits, and then they disputed, and she gave him money to give me, and I got it from the husband.

Q. Did you pass yourself as a revenue officer upon him? A. No.

Q. You swear that? A. I do.

Q. You know a man of the name of Edward Purcell? A. That is the man that led me into everything. He has figured among the United Irishmen. He got about forty pounds of their money and went off. He has been written to several times.

Q. How came you to know him? A. Through the friendship of Fitzpatrick. He had Fitzpatrick's wife, as a body might say, having another man's wife.

Q. He made you acquainted? A. I saw him there, and Fitzpatrick well contented.

Q. Did he ever give you a receipt? A. He did.

Q. Was it for money? A. No.

Q. What was it? A. It was partly an order, where Hyland he and I hoped to be together. It was a pass-word that I gave him to go to Hyland to buy light gold that I knew was going to the country.

Q. Did you ever give him any other receipt? A. I do not know but I might—we had many dealings.

Q. Had you many dealings in receipts? A. In receipts.

Q. I mean receipts to do a thing; as to make a pudding, &c. Did you give him receipts of that nature? A. I do not know but I might give him receipts to do a great number of things.

Q. To do a great number of things—what are they? A. Tell me the smallest hint, and I will tell the truth.

Q. Upon that engagement, I will tell you. Did you ever give him a receipt to turn silver into gold, or copper into silver? A. Yea, for turning copper into silver.

Q. You have kept your word? A. I said I would tell everything against myself.

Q. Do you consider that against yourself? A. I tell you the truth—I gave him a receipt for making copper money like silver money.

Q. What did you give it him for; did he make use of it; was it to protect his copper from being changed that you did it? A. He was very officious to make things in a light easy way, without much trouble, to make his bread light. But I did it more in fun than profit.

Q. You did not care how much coin he made by it? A. I did not care how much coin he made by it: he might put it upon the market cross.

Q. Do you say, you do not care how many copper shillings he made? A. I did not care whether he made use of it or not.

Q. Upon your solemn oath you say, that you did not care how many base shillings he made in consequence of the receipt you gave

him? A. I did not care how many he told of it; or what he did with it.

Q. Had you never seen it tried? A. No, I never saw the recipe I gave him tried, but I saw others tried.

Q. For making copper look like silver? A. To be sure.

Q. Do you recollect, whether you gave him half a crown upon which that recipe was tried? A. I never saw it tried; but I gave him a bad half-crown; I did not give it him in payment. I did it more to humbug him, than anything else.

Q. Were you never a seller of tea at Stradbally? A. Never.

Q. Anywhere? A. No.

Q. At the Canal? A. No.

Q. Had you ever in your custody any quantity of tea? A. Never, but when I might buy it for my family and bring it home.

Q. You never bought a quantity of tea at the Canal Stores? A. Never.

Q. Did you demand any there? A. No.

Q. Nor send any person to demand any? A. No: I do not know what you are talking of at all.

Q. Do you know of any tea that Fitzpatrick seized? A. No.

Q. Did you ever live at Power's in Thomas-street? A. I did by day, but never at night.

Q. Do you recollect tea being taken out of Power's house? A. No, I do not recollect its being taken; but I recollect to have heard of such a thing being done.

Q. Were you ever charged with having that tea? A. I went home the evening the tea was said to be taken, and was in bed, when at twelve o'clock at night, Master John Power and some watchmen came and took me out of bed. They searched the place.

Mr. SOLICITOR-GENERAL.—How long since? A. Twelve or fifteen months ago.

Mr. CURRAN.—Is that your hand-writing (showing a paper to the witness)? A. That is my hand-writing.

Q. That is one of the receipts you gave Power? A. I do not know; but I gave him many; I will not deny anything.

Q. Have you no recollection of any other that you gave him? A. I may have given him others.

Q. You have no recollection of them? A. Unless you brighten my memory.

Q. You have no recollection now of what any other receipt was. Do you swear that? A. Indeed I have not, but as you may give me a small hint, it may come to me.

Q. Recollect what you said. I ask you, have you no recollection of what any of them was? A. I have not, barring you give me some small hint, and then I will tell it.

Q. Do you know what became of that tea? A. No.

Q. Did you ever tell any one you did? A. No.

Q. Did you tell anybody that you found any tea? A. No.

Q. Nor that you lodged any at the Canal? A. No.

Q. Do you know a man of the name of Patrick Brady? A. No.

Q. Or Michael Brady? A. Not that I recollect.

Q. Then you never told such a man, that you had taken the tea,

or knew anything of it? A. Never to my recollection. If I did it was false.

Q. Did you ever tell it, true or false, to any person, that you got half of it as an informer? A. Never.

Q. Do you know Mr. Roberts? A. What Mr. Roberts?

Q. Mr. Arthur Roberts of Stradbally? A. I do.

Q. Did you ever talk to any person about his giving a character of you? A. He could not give a bad character of me.

Q. Did you ever tell any person about his giving you a character? A. I say now, in the hearing of the court and the jury, that I heard of his being summoned against me, and unless he would forswear himself, he could not give me a bad character.

Q. Did you ever say you would do anything against him? A. I said I would settle him, but do you know how? There was a matter about an auction that I would tell of him.

Q. Had you a weapon in your hand at the time? A. I believe I had a sword.

Q. And a pistol? A. Yes.

Q. And you had them in your hand at the time you made the declaration? A. I knew he was a government man, and I would not do anything to him in the way of assassination.

Q. Do you know a man of the name of George Howell? A. Thomas Cooke knows him.

Q. Do you know him? A. Yes.

Q. Did you pass yourself before him as a revenue officer? A. I do not remember that I did. It might be the case through drink.

Q. You must be very drunk when you did it? A. I never did it when sober.

Q. Did you ever apply at Justice Wilson's office, in New-street, for a summons as a revenue officer? A. It is not in New-street at all.

Q. Well, did you apply at his office? A. It was at his office I got the summons for Cavanagh, and the justice desired me, when the man was to appear, to bring the officer of the walk there.

Q. But you did not pass yourself there as a revenue officer? A. If I did, Mr. Wilson would not desire me to have the officer of the walk there.

Q. You said you never sold tea to anybody? A. Never.

Do you know a man of the name of Dunn? A. I know the wife of Matthew Dunn who keeps the Churn-Inn in Thomas-street.

Mr. SOLICITOR-GENERAL.—What you said about Roberts, you said publicly? A. I made no secret of it; but I did not say it with a bad intent.

Q. (By the Jury.—Was Finney present when that conversation was held about cutting off the hands, and putting out the eyes of persons suspected of informing government? A. He was; and he said further, which I forgot, but say now, that there should be a day appointed to bring such persons in, as they might not get out again.)

John Atkinson, Esq., was sworn, and stated that he went to a house in Meath-street, the sign of Saint Patrick, in the latter end of May, and found there O'Brien and several others, amongst them, he thought, a man of the name of Cooke, altogether about sixteen of them. He was told the signal word was "is Mr. Patrick here," and that upon mentioning it

he would be admitted it. He got that information from Colonel Alexander; he gave it and passed two persons, apparently sentinels, who desired him to go forward. He got into a room and found people sitting there. He did not see the prisoner there.

Peter Clarke was sworn, and stated he recollected the 31st of May last (1797); knows Patrick Finney and identified him; was in his company in Thomas-street, at Tuitt's house; Corporal Thompson, of the Kildare militia, who was afterwards murdered near the Naul, was there; when we went there Finney was in the tap-room, and called out "Kildare, how are you." Finney gave one paper to Thompson and another to witness; the paper produced is one of them, the one he gave witness; on giving witness the paper he desired witness to give it him again, as he could not give it without witness being sworn; Finney swore witness.

The following extract from the paper was read:—

"TEST.

"In the awful presence of God,

"I, A. B., do voluntarily declare, that I will persevere in endeavouring to form a brotherhood of affection among Irishmen of every religious persuasion; and that I will persevere in my endeavours to obtain an equal, full, and adequate representation of all the people of Ireland. I do further declare, that neither hopes, fears, rewards, or punishments, shall ever induce me, directly or indirectly, to inform on or give evidence against any member or members of this or similar societies, for any act or expression of theirs done or made, collectively or individually, in or out of this society, in pursuance of the spirit of this obligation."

"TEST FOR SECRETARIES OF SOCIETIES OR COMMITTEES.

"In the awful presence of God,

"I, A. B., do voluntarily declare, that as long as I shall hold the office of secretary to this I will, to the utmost of my abilities, faithfully discharge the duties thereof.

"That all papers or documents received by me, as secretary, I will in safety keep. I will not give any of them, or any copy or copies of them, to any person or persons, members, or others, but by a vote of this ; and that I will, at the expiration of my secretaryship, deliver up to this all such papers as may be then in my possession."

Mr. TOWNSEND.—With your lordship's permission, we shall now examine Lord Portarlington; and it is fair to apprise the court and the counsel for the prisoner of the object of this evidence. The witness, O'Brien, gave an account of his informing Lord Portarlington of what was going on. There is an attempt made to impeach the credit of the witness; and to show his consistency, we now produce Lord Portarlington.

Mr. CURRAN.—If a witness be impeached, it is competent to set him up, and to show that the impeachment is not well founded. Every witness is impeached by a cross-examination; but it is not usual to hear evidence in support of the witness for the prosecution until the prisoner's case is gone through. You may examine to

character or to particular facts, and the witness may be entitled to call witnesses to his general character. But can the counsel for the prosecution say, "this man's evidence is impeached, or seems to be impeached by the counsel for the prisoner; therefore, we think it necessary to support him now." I submit, it is not competent for them to set up his character now.

Mr. Justice CHAMBERLAIN.—The tendency of the cross-examination is, to impeach O'Brien in this particular transaction; and the witness now offered to be produced is to show that he gave an account of the proceedings as they happened. It is not competent for them now to produce witnesses to show that the witness already examined is of good character; but they want to prove that his former account is consistent with his present. Such evidence has always been received in my experience.

Earl Portarlington sworn.

Q. Your lordship saw James O'Brien, the witness who was examined this day? A. I have seen him.

Q. Does your lordship recollect upon what occasion you first saw him? A. I never saw him till the latter end of last April, when an acquaintance of mine, Mr. Higgins, brought the witness to my house. Mr. Higgins said the witness had told him, he had matters to communicate to Mr. Pelham, but as he had not the honour of knowing him, begged of me to introduce him. I desired to know the matter and the character of the man. O'Brien told me he had been lately admitted a member of the society of United Irishmen—that he there found out there was, on the Sunday following, a great number of people to be collected under pretence of a funeral—that the man to be buried was already buried, and he apprehended, or heard, that it would lead to insurrection. He also mentioned some other circumstances—I do not remember all. He stated that an attack was meditated upon the arsenal of the Castle. I told the matter to Mr. Secretary Cooke, and therefore did not lay it upon my memory.

Q. How many interviews had you with him? A. I think I had two interviews. I desired him to come no more, as I had communicated the matter to Mr. Cooke, to whom it belonged more than to me. I asked him had he anything new to communicate? He said, the United Irishmen were busy corrupting the servants of gentlemen.

Q. Did all this conversation pass at one time? A. I think it all passed at one time. All I mentioned first did.

Q. Where? A. At my house in Kildare-street.

Q. When O'Brien related this matter, what did you do with him? A. I went to the House of Commons and expected to see Mr. Pelham; he had some business, and Mr. Cooke came to the Speaker's chamber, where O'Brien related all that he did to me.

Q. O'Brien afterwards called a second time? A. He did.

Q. Your lordship mentioned something that passed at the second meeting; can you state anything more that passed at the second meeting? A. No, I cannot. As well as I recollect, what he said was at the first meeting; what he said at the second was trifling. I desired him not to come to me, but to apply to the executive government.

Q. Had your lordship any further meeting after the second? A. I

do not recollect ; he might have come a third time, but I did not like his coming after he was in better hands, with Mr. Cooke.

Q. Is your lordship's recollection so accurate as that you are certain whether what you relate passed at the first meeting, or whether some might have occurred at the second? A. I believe the whole may have passed at the first meeting—he certainly gave notice of the burial.

Q. So far you are certain? A. I am.

Q. And the rest was told by the witness? A. It was.

Cross-examined.

Q. Your lordship recollects that he told you the United Irishmen were busy among gentlemen's servants—that was at the first meeting? A. I cannot recollect—I rather believe it was.

Q. He told you of the funeral? A. He did.

Q. Did he tell you the name of the person to be buried? A. He did mention the name and the house, but I do not recollect them.

Q. He said it was a fictitious funeral? A. He did, I think.

MR. ATTORNEY-GENERAL.—My lords, on the part of the crown, we rest the case here, unless the evidence for the prisoner makes it necessary we should go further.

MR. M'NALLY stated the prisoner's case ; and when he concluded, the court adjourned for twenty minutes, and the sheriff was ordered to provide refreshment for the jury, who were not allowed to leave the box. When the court was resumed,

MR. JUSTICE CHAMBERLAIN said.—We wish that the counsel for the prosecution would point out the overt acts upon which they mean to rely, and to which they apply the evidence, before the counsel for the prisoner shall speak to the evidence.

MR. CURRAN.—My lords, we first pray that the paper which O'Brien admitted to be his hand-writing, and given by him to Purcell, may be read.

The paper was then read as follows :—

“ RECIPE TO PLATE COPPER OR, ETC.

“ File up some silver very small, add to as much aquafortice as shall cover the silver, then simmer them in a tea cup for 2 mts. then add to a small quantity Crame a tartar, then dip in your cork and sd. plate—then boil them in salt and water, till you see them gro whyte, then rub them with Crame a tartar.”

“ A MIXTURE OF MINERALS THAT SHALL EQUAL SILVER.

“ Take 1 lb. of long graind tin—Do. of Rock solder, or whyte Spilter, 1 lb. of Block tin.

“ N.B. to be melted all to Gether & to be poured into a point of vinigear, a dram of Suppliment— $\frac{1}{4}$ lb. of pine top ashes—this is not to be melted more than 1 time in the above mixture of waters.

“ N.B. the Liquor. must Be waram.”

“ For melting minerals you must have white-rock-asnick to extract silver from copper you must have sadcramonick.

“ Rigt. Honob. the Countess
Mercurer-watter
Venegar & pine top ashes.”

Margaret Moore sworn.

Q. Where do you live? A. At Stradbally in the Queen's County, about forty miles from this.

Q. Pray, Mrs. Moore, do you know James O'Brien? A. I did know a James O'Brien, who lived in Stradbally, and was reared and born there.

Q. Do you know his general character? A. I do since he was born.

Q. In what line of life are you? A. I am living in an industrious situation, in a shop in Stradbally.

Q. Are you a married woman? A. I am a married woman.

Q. Do you know the general character of that James O'Brien? A. I knew his general character until he came to Dublin, and have heard a great deal of it since.

Q. From your knowledge of his general character, do you believe he is deserving of credit upon his oath? A. During the time I knew him, in his father's life-time, until he came to manhood, I would not give a groat for his oath, and that is enough at present.

Q. Do you say for his general character, that he is not deserving of credit? A. I do, if I were to die for it this moment.

Q. Do you recollect whether you were arrested at any time by any body? A. I do; he come to me in the morning, and asked me was I ready to come to Dublin—I told him I was not, because I did not choose to go in his company—he then said, his wife and he were coming off—they went on the Monday and I came on the Tuesday—the least money we have, we must make the most of it. I was at Mount-joy-square, and as I was coming over the bridge, a man came up near to me. I asked him what was the matter—he asked me was my name Moore—I said it was—he said he had a small demand against me—I asked him at what suit—I tell the story as well as I can—he said, James O'Brien—James O'Brien, says I; I know the man right enough—the dirty blackguard, what demand has he against me? They brought me to the Tholsel or sponging-house, and James O'Brien came to the door—I said, you scoundrel, what demand have you against me? If you come to a friend's house, I will give you satisfaction that I do not owe you anything. I called to the lady of the house, and asked her to keep two guineas for me till I would call next morning. I came to the Tholsel next morning; O'Brien was there; are you there, my gentleman? says I—you see I am, says he—very well, says I, I must know how I owe you this money. I took out a summons for him. Then the sitting justice said, where do you live?—I reside forty miles from this, said I, and I gave O'Brien the lie, not minding what I said. The magistrate, offended, said, I had given the lie, and he tore the order, and that was all; and I hope I have said enough. The bailiff told me at another time that I hindered him of getting at the money.

Q. That money was ordered back to you? A. It was.

Q. (By the Court.—What house was this money deposited in? A. The house where I was lodged—the sponging-house.)

Cross-examined.

Q. How often have you been in Dublin before this? A. I cannot tell.

Q. You have been very often? A. I have been two or three times a-year.

Q. You have been acquainted with the sitting justices? A. For a part.

Q. You have been acquainted with them before this time? A. I never was before him before that time.

Q. What is your husband's name? A. Kelly.

Q. Where does he live? A. Near Mountmellick, in a gentleman's service.

Q. How long is it since you and he have been apart from each other? A. I see him as often as I can: he lived with Mr. Cassan of Sheffield, and it was Mr. Fletcher brought him there.

Q. Did not O'Brien think you were married? A. He did not see me married, but I believe he thought I was married.

Q. How long are you married? A. Thirty-three years.

Q. And knowing that you were a married woman, O'Brien had you arrested. Did you tell the sitting justice you were married? A. No.

Q. Did you ever take a journey to Kilkenny? A. Me!

Q. By virtue of your oath? A. I did live at Kilkenny.

Q. How long ago? A. Twelve years ago.

Q. You went to live there? A. I did.

Q. From Stradbally? A. Yes, sir.

Q. For what reason? A. I had a son bound 'prentice to a shoemaker, one Speare, and I had some friends of the name of Fitzpatrick, and I went there.

Q. Was there no charge against you in Stradbally? A. No; I never heard of any.

Q. Did you ever live with a man of the name of Archbold? A. Me!

Q. In the way of service, I mean? A. No.

Q. Do you know a man of that name, or Ashbold? A. My husband lived with a gentleman of that name.

Q. Was there a charge against you respecting curtains? A. Against me! I have never heard of anything of the kind.

Q. Is there a woman of the name of Walker in Stradbally? A. There is—Molly Walker.

Q. Was there anything said about butter, bacon, or such articles being stolen? A. I never stole any.

Q. Was there ever a charge made about it? Your husband knew this man O'Brien as well as you did? A. No he does not.

Q. You live in the town of Stradbally? A. I do; and honestly.

Q. What rent do you pay? A. Eight guineas a-year.

Q. What have you for that? A. I have a house with a shop.

Q. What commodities do you deal in? A. In crockery-ware and delft, when I can touch it—tea, sugar, eggs, and bread, and everything I can put my hand to, and make a penny by.

Q. You put a hand to anything you meet? A. I do in that line—not in any other.

[Here the jury desired she might point out O'Brien, which she did, saying, "that is the very identical lad."]

Q. Did you ever hear of this man being examined as a witness

before? A. No; I knew nothing about him but what I told you.

Q. How long since you were arrested? A. Last May twelve-month.

Q. Did you travel with him? A. No.

Q. You were very intimate with him? A. No; not any more than any other—I kept him off as well as I could.

Q. Did you ever eat or drink together? A. I never drank a drop of tea with his wife in my life.

Q. How came this man to propose to you to come to town if you were not intimate? How came it to be planned and settled and agreed upon between you?

Mr. CURRAN.—She said no such thing.

Q. Did you not say he thought you would be to town with him?

A. Well, suppose so—I will not say any more.

Q. Did you not say he thought you would be to town with him?

A. I will not answer any more.

Q. You must. A. He called in the morning, and I said I was not ready, and he went off by himself.

Q. Did you not say he thought you would be with him? A. I do not know whether he thought so or not.

Q. Did you say so? A. I do not know: he said one Nalty and himself were going to town, and I said I could not go.

Q. I ask you again, were you not upon such terms that he proposed to travel with you? A. I would come with others I thought less about.

Q. How long have you lived in Stradbally? A. Since I was born—I have been thirty-three years keeping house.

Q. Do you know any person of the Queen's County here? A. I do—Mr. Gray, Mr. Greaves, and Mr. Dunn.

Q. They are witnesses along with you? A. No; they were here before.

John Clarke examined.

Q. Where do you live? A. At the "Blue-bell."

Q. Do you mean in the county of Dublin? A. Yes.

Q. How long have you lived there? A. Since I was born.

Q. What business? A. A bleacher.

Q. Any other? A. The public business.

Q. Do you know James O'Brien? A. Yes.

Q. Would you know him now if you saw him? A. There is the man.

Q. What business does he follow? A. I do not know.

Q. Did he ever tell you what business he followed? A. No; but he came to me as a revenue officer.

Q. How do you know that? A. By pulling out a pocket-book and some paper, and I being simple thought him an officer.

Q. To what place did he come? A. To my house.

Q. Did he tell you what the paper was? A. He demanded my licence from me, and I did not know but he might be an officer.

Q. (By the Court.—What papers did he pull out? A. He pulled out a paper as for a licence; he said he would run me to seventeen

pounds expense. I gave him two and twopence, and twelve pence in halfpence.)

Q. At that time did he say for what he would run you to the expense? A. For selling spirits without licence. I did not know but he was the right person.

Q. What do you mean by supposing him the right person? A. I did not know but he was a real officer.

Q. What happened there? A. He came three or four days after, demanding more money.

Q. (By the Court.—What did you give him the three shillings for?

A. On his demanding a licence. Afterwards he came and said, if I gave him half a guinea he would not trouble me again, nor suffer anybody else.)

Q. So you gave him two sums? A. I did.

Q. Was he sober when he came to you in this manner? A. He was, and pleaded poverty; and he wanted shoes, and desired me to assist him.

Q. Had he been acquainted with you before? A. I never saw him before he came to me in this character of an officer.

Q. If O'Brien said he never passed as a revenue officer, would he swear true? A. No; he passed as a revenue officer to me.

Q. And he was sober? A. He was.

Q. Did you give that money as civility-money to an officer? A. I gave it in fear, to tell the truth, for he said he would take the bed from under me.

Cross-examined.

Q. You keep a public-house at the Blue-bell? A. Yes.

Q. How long? A. Two years.

Q. Have you not sold liquor more than two years? A. I have kept the opposite house twelve years ago.

Q. How long have you sold liquor? A. I sold liquor in James's-street; I have sold malt and huxtery.

Q. Do you mean malt liquor? A. Yes.

Q. Did you sell any little spirits in that time? A. I am a working man, and keep a bottle for myself.

Mr. CURRAN.—He is not bound to answer these questions.

Mr. Justice CHAMBERLAIN.—He is not bound to answer them, but may if he choose.

Q. Pray, did O'Brien ever drink at your house? A. Not to my knowledge, barring a draft of malt.

Q. Have you always had a licence for selling liquor?

Mr. CURRAN.—He is not bound to answer.

Q. O'Brien called at your house and showed you a paper, and told you he would charge you with selling liquor? A. He did.

Q. He said he would prosecute you? A. He said he would bring the army and take the bed from me.

Q. Did he not threaten to prosecute you if you did not give him money? A. He said he would bring the army there; and I gave him two and two-pence in silver and twelve-pence in brass.

Q. And you have been a publican in James's-street and at the Blue-bell, and you were threatened by a man, saying he would bring

the army upon you. Did you see a summons? A. I do not know—I cannot read.

Q. Did he not threaten to prosecute you? A. He did sure enough.

Q. When did you first tell this story to anybody? A. Immediately after it happened.

Q. To whom? A. To my neighbours.

Q. Mention them? A. To John Hanlon of the Bleach-green.

Q. Did you see O'Brien since that? A. I did, in James's-street.

Q. Is there not a justice of peace near you? A. There is.

Q. Did you complain to him? A. No.

Q. And when did you tell Hanlon of the Bleach-green? A. I told it often.

Q. You were afraid O'Brien would prosecute you. You know Cavanagh of the Red-cow? A. I do—he is here.

Q. You have often talked with Cavanagh about this matter? A. We have.

Q. How often within these four months? A. I met Cavanagh upon his own ground, and he talked to me often.

Q. How came you here to-day? A. I came here to tell the truth.

Q. Did you come here of yourself? A. I did.

Q. You heard Finney was to be on his trial? A. I did.

Q. And what of O'Brien? A. I heard he was under a bad character.

Q. And what made you come here; from a point of conscience and justice? A. Yes, without fee or reward.

Q. And how came you to come here without fee or reward? A. To tell the truth.

Q. What invited you? A. Nothing more.

Q. You heard, by account, that Finney was to be tried? A. I did.

Q. And out of justice you came, hearing of this trial—and that is truth? A. Yes.

Q. And the whole truth? A. Yes.

Q. How long do you know Finney? A. I do not know him.

Q. (By the Court.—Were you summoned? A. I was.)

Q. When were you summoned? A. This day.

Q. Was that the first day? A. No, I was summoned yesterday.

Q. When before? A. Yesterday week.

Q. When before that? A. I cannot recollect.

Q. And to whom did you mention this matter before? A. I do not know.

Q. You came of your own accord for a man you do not know? Can you tell me how you came to be summoned? A. I cannot.

Q. Nor have no guess about it? A. No.

Q. Have you a great resort of company to your house? A. No, very few.

Q. An odd meeting of a Saturday night? A. No; but a few of my own workmen.

Q. (By the Jury.—Did O'Brien say he was a revenue officer? A. He did.)

William Dunn sworn.

Q. Where do you live? A. At No. 57, Dame-street. J

Q. What is your way of life? A. Shopkeeper to Mr. Butler at present.

Q. Do you know James O'Brien? A. I know James O'Brien of the old mill near Stradbally.

Q. Look about and try if you see him? A. This is the man.

Q. Have you known him long? A. Since he was a child.

Q. Have you known his person and character? A. Since his father's death.

Q. From your knowledge of his general character, do you think he deserves to be believed upon his oath in a court of justice? A. Why, indeed, and upon my oath, I would not take his oath, nor believe his oath for any small matter.

Q. Do you know Mrs. Moore who was on the table a while ago? A. I do.

Q. (By the Court.—What do you mean by saying you would not take his oath for a small matter? A. That I would not take it for three-pence, or anything at all. I would not believe him.)

Cross-examined.

Q. Did you ever hear of this man being examined in a court of justice before? A. No: it is from other matters I form my opinion.

Patrick Cavanagh sworn.

Q. What business do you follow? A. A farmer.

Q. What else? A. I keep a carrier's inn.

Q. Where do you live? A. At Inchicore.

Q. Do you know the Red-cow? A. Yes, I keep that house.

Q. Do you know James O'Brien? A. I have seen him several times.

Q. Would you know him? A. I believe I would.

Q. Do you see him there? A. I do not know (here O'Brien was pointed out to the witness)—I think that is the man.

Q. Do you remember his ever coming to your house? A. I do.

Q. What passed? A. He came to my house and said he was stationed in the walk; I thought Fitzpatrick was the man; no, said he; why then, said I, he was here yesterday; then, said he, Fitzpatrick is to show me the way till I am acquainted with it.

Q. Did he ask anything from you? A. No.

Q. Was he very drunk? A. No: he was very sober, I think.

Q. Did he come to you again? A. He did.

Q. What passed that time? A. He came to the cellar, and there was a hoghead of beer and one of porter, and he turned the cock and examined. He asked me to lend him fourpence, which I did, and gave him his breakfast. He then summoned me, and a man came to me and said—he was sorry for me; why? said I; because, said he, you have a large family, and God help you when he gets the book into his hands.

Q. Did anything further pass? A. Yes; I went to the justice. A man desired me to make it up; I said I would, rather than be in such hands. I was told he said I assaulted him. I said, if giving him his breakfast was an assault, I assaulted him.

Q. Did you make it up? A. I did, when I saw him the next day.

Q. What money did you give him before that time? A. All I had.

Q. How much was that? A. Two guineas and some change.

Q. For an assault never committed. Did you ever assault him? A. Never, by my oath.

Q. Is O'Brien a man that ought to have credit upon his oath in a court of justice? A. I do not know him, but what I have told you.

George Howell sworn.

Q. What is your situation in life? A. Clerk in a public office.

Q. What office? A. Justice Wilson's office.

Q. Do you know James O'Brien? A. I do.

Q. Did he ever go to your office? A. He did.

Q. Upon what occasion? A. He came there one morning; Mr. Wilson was not there; he wanted summonses for persons who sold liquor without licences. I asked in what walk. He mentioned the Cow and Calf, and Fox and Geese; I asked him what was become of Fitzpatrick, whom I knew; he said he was turned out, and that he supplied his place; I said there were not summonses enough—sometimes we have one or two, sometimes twenty. He took out a large pocket-book, and said he had plenty from the commissioners of the revenue and Mr. Swan. I did not see the fellow for some days after. I met Fitzpatrick in some days after, and expressed my sorrow that he was turned out. He asked me who told it; I said O'Brien. The greatest rascal and informer upon the face of the earth, he said. We met him near Bishop-street, and I asked him about it, and he ran up Bishop-street, and I never saw the fellow since that time to this.

Q. Was he sober? A. Perfectly; it was ten o'clock in the day.

William Byrne sworn.

Q. Did you see a man of the name of Clarke in court to-day? A. I did.

Q. When did you see him before? A. Yesterday.

Q. How was he dressed? A. In a short jacket, in scarlet.

Q. Where did you see him yesterday? A. In court standing there.

Q. Did you hear him swear he was not in court yesterday? A. I did, which is the cause of my coming forward in this manner.

Q. Did he swear true? A. He did not.

Bernard Cummins sworn.

Q. Do you know the prisoner at the bar? A. I do.

Q. How long? A. Many years.

Q. What business do you follow? A. The tobacco business.

Q. What is his general character? A. I never heard anything improper of him.

Q. Did you ever hear, until the present charge, of his loyalty being impeached? A. Never.

Q. (By the Court.—Did he work with you? A. He did.

Q. How long? A. Many months.)

Cross-examined.

Q. Was there ever any charge made against you? A. No.

Q. Were you ever taken up on any charge? A. No.

Case rested for the prisoner.

Peter Clarke called up again on the part of the crown.

Q. When you were upon the table before, you said you were not in court yesterday? A. I made a mistake being so puzzled.

Q. Were you here yesterday? A. I was.

Q. Did Mr. Kemmis send to you? A. He did.

Q. Was it to come or stay from court? A. To come to court.

Q. Did you come? A. I did.

Cross-examined.

Q. Did you not say that Mr. Kemmis desired you not to come?

A. I did, being puzzled, and I did not know anything of law.

Q. Then not being a great lawyer, you came here and said you did not? A. I did.

Q. Were you ever upon the table before? A. I was.

Q. Then you are not so simple in the business? A. I never swore wrong before.

Q. You swore against one Lynch? A. I did.

Q. Was he found guilty? A. No.

Mr. ATTORNEY-GENERAL.—The court have been pleased to ask, to what overt acts we apply this evidence. I say, my lords, we apply it to all the overt acts: first, that he became a member of the society of United Irishmen—there is evidence of that; that he confederated with them to assist the French; that he with others consulted and agreed to send persons into France, to invite the French to invade this kingdom.

Mr. JUSTICE CHAMBERLAIN.—I do not think the evidence supports that. But, in short, you think there is evidence to go to all the overt acts.

Mr. ATTORNEY-GENERAL.—My lord, I do.

Mr. CUREAN.—My lords and gentlemen of the jury, I did imagine in the early part of this trial, that I should have to rise to address you upon the most important and awful occasion that can happen on this side the grave; and that is, when the defence of a man labouring for liberty, for life, for everything that can be dear to a human being, depends upon the casual strength of an exhausted, and at best not a very feeble advocate. But, gentlemen, I do not now pretend to say, that I rise under any of these burdens. I do not rise poor and enfeebled—I affect no such despicable humility. I rise not to undermine your judgments, or to awaken your compassion. But I rise up with whatever there is of law, of constitution, of conscience in the realm at my back, and standing in the front of this all-powerful alliance, I do demand your verdict of acquittal for my client; and I will show you that this case is that kind of despicable tissue which requires no force to break it. In walking by it, it vanishes into air, and is sundered into tatters.

I did feel, gentlemen, an observation made by the right honourable

gentleman who stated this case for the crown, made in the spirit of a kindness which for a number of years has filled me with much gratitude, and reflected no little credit upon me. He has been pleased to say, that the counsel for the prisoner would address the court and you with the same spirit of candour which he did upon the part of the crown. Gentlemen, I accept of the observation made by that highly-respected counsel with the more confidence, because mine own heart tells me it is sound and honest. I know not the situation in human life in which the humble abilities of any man can be so gloriously exerted, as in endeavouring to give an honest defence to a fellow-subject labouring for his character and his life. If there be any sub-lunary situation in which a human being can be engaged, that can be supposed to attract the eye of heaven, it is where God looks down upon one human creature defending the life of another against human turpitude—a life which God himself has endeavoured to defend by his awful canon—"Thou shalt not bear false witness against thy neighbour;" and, "Thou shalt do no murder."

Gentlemen, let me deserve that kind observation which the counsel for the crown has been pleased to make—let me reason fairly and coolly upon this subject. Thank God, I cannot! But let me reason unclouded, though, I trust, not unwarned by the observation.

Gentlemen, the prisoner stands indicted—I wish to state with all possible succinctness and clearness the nature of the charge, and I am glad that my learned colleague has done so much before me—so much so, that when I repeat anything which he has said, I run a risk of weakening it much. I am not in the habit of paying compliments where they are not deserved; neither am I in the habit of receiving them myself. But I trust, the honesty of his heart must have gained from you that respect and credit which a statement flowing from a clear judgment and an animated heart deserves.

Gentlemen, the prisoner at the bar is indicted for high treason. The indictment contains two kinds of high treason, and is founded upon the declaratory statute the 25th Ed. III. The observation made upon that statute by my learned friend must impress itself upon your hearts, that it was made for the protection of the subject in cases where no man knew whether his life was safe from the vague and wandering uncertainty of the law—when no man knew whether he should lose his life by his own conduct or the construction of crown lawyers; therefore that statute was enacted.

It has been called a blessed act, and may the blessings of God give repose and reward to the souls of those who made it! It was made to regulate the law of treason, and it is founded upon the principles of justice and humanity. It enacts that no man shall be convicted of treason, but upon proveable evidence of overt acts—which overt acts must be clearly stated in the indictment. The meaning of the statute is this, that no man's life shall be taken away upon allegations, that he did an act this way or that by possibility, but a clear and precise overt act must be proved to the satisfaction of the jury who try the charge. The statute does everything which human foresight could do to bring the guilty man to judgment, and to save the innocent man from death. I would call it an omnipotent statute, were it possible for the omnipotency of an act of parliament to appal the

conscience of a remorseless perjurer or drive him from a court of justice. But law could not do it—religion could not do it—the feelings of humanity locked up in a frozen and obdurate heart, could not do it. It could not prevent the arrow from being pointed at the heart of the accused; but it has been given a shield to protect him—the crime shall be stated so clear, that no man shall mistake it—the acts by which he intended to effect his wicked purpose must be stated, and must be proved to the satisfaction of the jury—he must be proveably convicted? Are you at a loss to know it? Does it mean, that if a man should come and say—“that is a traitor, and was vile enough to intend to kill the sacred person who holds the reins of the state.” Is that what is meant by proveably convicted? that a wretch can come upon the table—no matter who—the noble lord that appeared this day—their lordships on the bench—or O’Brien the informer—and say, “by virtue of my oath, the prisoner intended to kill the King; and settled all the means of doing it; and bought the powder and ball in order to kill him?” Is that what you suppose by proveable evidence? It is not what the law means: it means that the cogency of the evidence lays as strong a hold of the jury, as the sentence of condemnation does of the prisoner; and they are obliged to find him guilty against the yearnings of human nature—that is what the law means, and that only. It means not that dirty ribaldry that is flung on him by any man—no, in that abominable filth and scurrility which the wretch flings on the intended victim of his perjury, there is nothing deleterious, but there is something saponaceous which clears the character it was intended to vilify.

Gentlemen, I have stated the law of high treason a little more warmly than I need have done; but I do not apologise for any warmth. It is honest. I say then the overt acts must be laid and proved, in the words of the statute, by positive testimony from untainted witnesses; the law which I am laying before you is recognised by every writer on the law of treason; by the most illustrious commentators on the laws of England. I do not wonder they have been so often repeated; the abandonment of these rules has produced such fatal consequences, that no man can lament them too long. No man viewing the constructions which had been put on acts to construe them into treason; no honest man could ever think he had done enough to warn each successive court and jury, how they suffered themselves to be carried away by those passions which are disgraceful only when they are not able to hold the manly check of judgment over them, under the guidance of reason.

The charge upon which the prisoner at the bar stands before you, gentlemen of the jury, is two-fold; that is, of compassing and imagining the death of the King, and also of adhering to the King’s enemies. It is peculiarly necessary that I should be circumspect in everything I shall say to you, because, if I fall into any errors, I might be liable to have them detected by the counsel, whose duty it will be to answer me. I am sure it would be in the spirit of the crown prosecution; and if I was to make any mistake, therefore, it could not escape detection from that gentleman. Gentlemen, the indictment, as I stated before, is founded on two species of high treason; compassing and imagining the death of the King, and also

adhering to the King's enemies. To support which charges, there are no fewer than thirteen overt acts, as I have already described. I will only make a few observations on them. It will not be necessary for me to go minutely through them all; and the learned counsel for the prosecution will feel I am speaking with great candour when I admit, that if you were to consider the evidence you have heard as true, there could be no doubt but the indictment would be supported. If the evidence was to be believed by you, I think there could be no doubt that the prisoner must be guilty, under some one or other of the overt acts laid in the indictment. I do not complain that the counsel for the crown when called upon by the learned judge, did not find it expedient to point out on which of the overt acts it was they meant to rely, when I saw the complexion with which the evidence for the crown appeared, and the additional complexion it received from the evidence for the prisoner. Mr. Attorney-General was pleased to make an observation which has drawn a strong remark from my learned colleague:—Mr. Attorney-General told you that the atrocity of the charge ought not to make any impression on your minds—it was a remark of candour and liberality—because, what he meant was this, that you are not from any impulse of loyalty or affection to the King, to give credit to the accusation, merely because it is atrocious. But the remark of my friend in answer to that was, and in which I fully concur, it was not the business of the Attorney-General to make the observation, but his disposition will admit the justice of it; that the atrocity of the crime, of any charge, is not the reason why a jury should give belief to it, but that they ought to disbelieve it; and therefore, the atrocity of the charge ought to be considered by a jury as an improbability of the truth, because the more atrocious, the more unlikely.

I can imagine no crime greater in a civilized state—I care not whether it be democratical, or aristocratical, or monarchical, or even actually despotic; I say, no crime can be greater, than an attempt to destroy the person who holds the executive authority of the state—far be it from me to conceal my abhorrence of such a crime. Happy am I, that in the discharge of that duty which I owe to my client, I am not called upon to varnish over, or disguise a crime which I abhor, but that I can express my opinion without involving the fate of my client. The defence of my client is, that no man feels a greater abhorrence of the charge than the prisoner at the bar, and that he feels himself as innocent of the imputation as your own hearts, gentlemen, do tell you that you are.

Gentlemen of the jury, the overt acts which are charged against the prisoner, are all very much of the same nature; consulting to destroy the government; entering into a society for the purpose of subverting the constitution; calling in the French, enemies to the King, for the purposes stated in these overt acts. They are overt acts, which very much resemble each other in their general nature, in both counts of the indictment; but there is a distinction which I feel of great moment to make to you, and it is of great moment indeed. It has been not an uncommon expression in courts of justice to say, that the prosecutor artfully did this, or suppressed that. I do not like this mode of expression. I do not like to make observations, when

they reflect upon the candour of any man ; but we have to complain, that the prevaricating witness who appeared this day, has committed a base imposition on those gentlemen, whose duty it was to bring forward this charge against the prisoner ; to that, and to that only, do I attribute the want of candour, which is not to be expected from the informer, and I should shrink to attribute it to any other cause.

You find, gentlemen, at the bottom of this charge, what I may call the foundation-stone of it, laid, or endeavoured to be laid, by Mr. O'Brien, the informer ; that there was a deliberate system entered into by a number of persons calling themselves United Irishmen—taking certain tests for the purpose of committing the treasons charged in the overt acts. I said there was a distinction of great moment, that O'Brien endeavoured to hold out to the public, to all Europe, that he endeavours to disseminate a belief, that 111,000 men in the province of Ulster alone—to establish a belief on his own single evidence, that at a time of peril and calamity like the present, such a body of men, able to defend their King, and country, and constitution, against a host of enemies, had combined against the life of that King, and the tranquillity of that country ! On that point, it is for you, gentlemen, to consider, and to consider again and again (if there was nothing but the name of an Irishman, so basely aspersed, at stake from the insinuation). I will show you it is a fact of such a nature, as is unworthy of belief. If there is any fact stated by that witness, which can be deserving of belief, what is it ? It can only be, that there is a great combination of the human mind upon public subjects ; and here the distinction of materiality arises ; because if there be such a combination as that described by the witness, you must take the evidence altogether, and consider the paper produced in court as a foundation of the charge. Do not mistake me. Gentlemen, I say, a witness asserting such a fact as O'Brien has asserted, deserves no credit from you ; but if you conceive he does, you must take the principles of that combination, from that kind of institution which has been read in court. I will state to you what it is ; it is to get rid of religious animosities. Would to God it were possible to be done ! You will see, gentlemen, from what I am going to do, that am I stating the facts fairly. The next object is parliamentary reform ; if that be an offence, the text is full of it ; it needs no comment of mine. The last is that of secrecy. Gentlemen, in the hearing of the court, I do submit the question to the counsel for the crown ; I do make this appeal to the bench, to the bar, to you, gentlemen of the jury, whether, take that obligation in the words of it, there is anything treasonable ? It needs no argument to show you there is nothing in it of treason. I would make myself ridiculous were I to say, that however taken there might be no treason in it. There may be a colourable combination for anything, and the real purpose be concealed. What is the law of England ? What was the opinion of the very able court that presided at the late trials for constructive treasons in England ? It is this—"strong must that proof be, which goes to show that the papers bear any internal import from what they seem to bear ; that they seem to apply to one purpose, and mean another."

If the tests of any combination were open, suppose the tests of

the Corresponding Society in England, there might be a reason for concealing their meaning, if anything bad were intended, in words which could not attach guilt to them ; but, is a paper, not subject to public discussion, subject to no public investigation, to be worded in the same manner ? It is ridiculous to say that, if 111,000 men meet secretly to hatch treason and treasonable conspiracies, they will express their intentions in words, not bearing such meaning, but will take an oath of another import ! Do you think it common sense that if men meet and deliberate on sending persons to France, or murdering the people, or overturning the constitution, or for any of those purposes form a guilty combination, they would take an engagement for something totally different from that which is the real intention of their combination ? What purpose could it answer ?

Gentlemen, I have stated the proposition abstractedly taken, that upon the written paper there is nothing treasonable. But I admit it may be the foundation of a treasonable purpose. I am well aware that a man taking that obligation, will not be prevented by it from becoming a traitor if he chooses ; he may, if he be base enough, make an attempt upon the sacred person of the King ; no oath or test can prevent a man becoming a traitor. But, the question for you to decide upon is, whether there was, independently of that engagement, (and there is no evidence that I recollect)—I say, the great and only question for your consideration is, have there been any treasonable purposes proved by the witness, O'Brien, against the prisoner at the bar ?

I have told you, gentlemen, that the words of the statute of the 25th of Edward III. on which this indictment is grounded, are, that it shall be proveably evinced to the satisfaction of the jury that the prisoner is guilty of the treason charged upon him ; what is the evidence produced to support that ? Mr. O'Brien. What has he stated to you ? And here I beseech you let me have the benefit of that circumstance (as much as fools may abuse these countries)—let me have that benefit, that privilege which distinguishes the trial by jury from all other modes of trial in the world. Twelve men from the walks of common life, acquainted with the human character in all its progressions, not emerging from the must and cobwebs of a study, nor abstracted from human nature, where they may come without vision to make them discern the distinction between the sincerity and insincerity of the human character. I call upon you to let me have the full benefit of that particular distinction of these countries—the trial by jury. Look carefully, and weigh the probability of the story :—"I was going through the street," says O'Brien, "I met Hyland." "Are you up ?" says Hyland—"are you up ? You will be murdered before you go half a street if you do not become an United Irishman." Gentlemen, some of you are younger men than I am ; but you are all old enough to form an opinion upon the truth of this story. Do you think it probable ? Suppose any of you were of the society of United Irishmen, or Freemasons, or Friendly Brothers, and suppose you were walking along and met me, would you say—"Come in here ; are you a Friendly Brother or a Freemason ?" "No." "Then come in here, or you will be murdered before you get half up the street." Do you think that likely ? Did you ever hear of a man tempted to commit a felony of death under a temptation of that kind ? Such a coaxing of the

native simplicity of O'Brien. "Sweet Mr. O'Brien, come in, or your precious life will be taken away before you get half the street." What a loss he would have been to his King, if he ventured to go away without becoming an United Irishman! All this in the street. He could not call out for assistance; his members refused their office; his feet were incorporated with the paving stones; he could not run; he went in, and what happened there? Why, he meets a number of people; one goes to one door, and another goes to another, and the first cries out—"Secure the doors from this bloody-minded rogue, that will not save his own precious life by becoming an United Irishman." Did you ever hear anything like it in common life? He took a book in his hand after he went in, and supposing his life would be taken away if he had not gone in, he takes the United Irishman's oath; but that is not all; this oath must be washed down; and, lest he throw it off his stomach, why, they fill him up to the neck with beef and whiskey. He would have gone to make discovery of this; but he was drunk. Did he go the next morning? No; he was sick; but his loyalty returning with his stomach, they came to him, as soon as light appeared, and made him drunk again. Poor fellow! his misfortune saved his life. He was sworn in an United Irishman, and to that he charges all his distresses. Poor, innocent, sober James O'Brien was made drunk two days successively; so that he was not only sworn against his will to save his life, but he was made drunk against his inclination! He would have gone to lodge his sorrows in the sympathetic bosom of the major; but he was prevented; for they made him drunk again. He did not go to discover the third day; he was drunk. At last he went to a justice of peace, and then, gentlemen, his loyalty is better than his memory or his sobriety. What does he do? He goes to make a discovery, and in the force of his loyalty, becomes a prophet. I am holding out a strong vindication of his character, because, what did he do? He stated what occurred three weeks before it happened. He went to Lord Portarlington, and what does he do? He tells his lordship of a circumstance that did not happen for three weeks after. Honest James O'Brien! because he could keep nothing secret, and in letting out the truth, he tells that which he knew nothing about at the time! Let others argue on logical truth, or ethical falsehood, if I can pin an informer to one ring of perjury, I will bait him on it, till it is impossible to give him credit. Can the life of any man be safe, can it be considered of any moment, if such perjury as this is to take it away? What argument can be found to support his testimony, when he swears he has perjured himself? He forgets when he perjured himself—what! an informer forget? But, in spite of what he swears, I will say he is not perjured, but he is an honest man! I am speaking of his communications with Lord Portarlington; I am not confounding his testimony with the perjury of Clarke; but I am speaking of O'Brien, and comparing his testimony with himself, because he stated, he did not hear anything of the funeral or of attacking the stores till the second or third meeting, and Lord Portarlington mentions he stated it upon the first. If it is possible that any man can come into a court of justice as a witness to perjure himself, if such man did come in, I do pray God to forgive him; and I do beg that man's pardon for what I have said;

because it is your calm and cool verdict that is to stamp on his character that degree of credit which he deserves, and which cannot be inflicted by any casual strictures of mine.

Gentlemen, you must perceive it to be material to the question, how it came to pass that O'Brien should be able to tell Lord Portarlington, that it was intended to make an attack upon the ordnance, unless he started at the beginning with a design of being an informer, and with a determination of swearing against some person or other. Whether he saw Hyland or Finney, is a matter extremely questionable. But this is not; that he laid the foundation of a false charge; false—because it does appear that he stated it at a time it could not possibly exist. And here, gentlemen, you see the cleverness he exerted in imposing on the honest, unsuspecting nature of those who were to conduct and take care of the business for the crown; he stated as a fact what existed merely in his own fancy; he did state that to Lord Portarlington, which could not have happened at the time; and with which, by his own evidence, he was not acquainted till after his interview with that lord.

Gentlemen, I have stated a little of the evidence, I shall have occasion to return to it again; but before I do so give me leave to recall to your minds that statement by my learned friend as applied to the law of treason in this case. It is the invulnerable principle of the English law, that two witnesses are necessary in cases of treason; but though the law is not the same in both countries, yet the principle of the law is, and is engraven upon the heart of every honest man; for every man must see what the principle of that is, and will do what St. Paul says—"They know not the law nor the prophets; but they do the things that are written in their hearts; their consciences also bearing unto them testimony."

I own it is with a warmth of heart that I refute a calumny of endeavouring to separate the two countries. We feel the value of the British constitution, and under the sacred shade of that constitution I do now place my client; and I do call upon you to show a cordiality of adherence to the British law, not by a sycophantic display of idle words—not by saying "Lord! Lord!"—but "by doing the will of that Father which is in heaven." Show your concurrence in the principles of that law—show an adherence worthy of yourselves by showing an adherence to a communion of law and justice. What does that law say? If my client must be unfortunate, it is for being an Irishman; for having been tried in his own country. Had he been tried by a jury of Ludgate-hill shopkeepers, he would long before this time have been in his lodging, if he had one; and the court (had he been tried in England) would have said, the law does not suffer a man to be butchered by one witness—by one wretched perjurer. The court and jury, and those who prosecute for the crown, may be imposed upon, where a wretch thirsts for the blood of his fellow-creatures; and, if such may happen in England, why should an Irish jury be incredulous of the fact? In that country, St. Paul's is not more public than the charge made against the poorest creature that crawls upon the soil of England. There must be two witnesses to convict the prisoner of high treason. The prisoner must have a copy of the jurors' names, by whom he may eventually be tried; he must

have a list of the witnesses that are to be produced against him, that they may not, vampire-like, come crawling out of the grave to drink his blood ; but that, by having a list of their names and places of abode, he may inquire into their characters and modes of life, that, if they are infamous, he may be enabled to defend himself against the attacks of their perjury, and their subornation. There must, I say, be two witnesses, that the jury may be satisfied, if they believe the evidence, that the prisoner is guilty ; and if there be but one witness, the jury shall not be troubled with the idle folly of listening to the prisoner's defence. There can be but little probability of contradicting one witness ; he little fears the detection of his intended murder, and his public perjury. It is difficult to contradict that man, who has only a communication between himself and the infernal author of all evil. It is only when the promoter of his infamy calls for retribution, in the loss of his victim, that the wretched perjurer is appalled. I do not mean to apply any of those observations where man is equal with man ; God forbid ! I trust that the principle of the English law will be proved by you, to be the same in this country, that I am yet proud of. God forbid ! we should not feel as much, and have hearts beating as high, as they can in England. I care not that my client knows nothing of you. If the blood of a man in this country is not considered equally precious as in another—yet, if I know the feelings of the human heart, and the look of the human countenance, he has no reason to regret that you are not an English jury ; though it may be unfortunate for him that he is an Irishman. Am I reasoning wildly ? Why was it made the law in England that two witnesses were necessary on a trial for high treason ? Because the law did take it for granted that no one witness ought to take away the life of a prisoner charged with such a crime ; and if that was the reason which induced that necessary rule of law, was it absurdly stated to you that it was founded in the clear and obvious principles of justice ? If so, the laws of eternal justice do not require the sanction of an act of parliament.

Another circumstance has occurred to me of particular moment, and that is, the man came forward to take his trial in the absence of two witnesses, sworn to be materially necessary for his defence. He stands at the bar totally divested of whatever aid they could have given him by their presence. What they could have stated, I am not at liberty to mention to you ; it would not be evidence. That they are not here now, is not imputable to any neglect of my client to procure them. I have only to say, that the two witnesses might have been most material to the defence of the prisoner ; but so little do I now think he stands in need of their support that I should not have mentioned them if they had not been so oftener named. Gentlemen, do you remember the testimony admitted by O'Brien, that "if Roberts said anything against him he would settle him ?" The very informer coming here to plunge a dagger into the heart of the prisoner, thus plunges a dagger into the heart of the intended witness. Why was it he threw his abominable threat against the life of Mr. Roberts ? It was to deter him from giving evidence of the baseness and infamy of his abominable life. I said Mr. Roberts was not here ; now I say he is here—I appeal to the evidence of O'Brien—I appeal to the heart

of that man who vowed vengeance against him if he appeared on the table. I appeal to the obdurate heart of that wretched and abandoned man. What was the evidence he knew Mr. Roberts would have given if he had dared to appear on the table, and in a court of justice? And that he would make it at the risk of his life, from the attack of the perjured informer, if he came into a court of justice to give evidence. Good God! is a transaction of this kind to be borne? Where do the laws exist? Shall the horrors which surround the informer, the ferocity of his countenance and the terrors of his voice, cast such a wide and appalling influence that none dare approach and save the victim whom he has marked out for ignominy and death?

He has told you there are no less than 111,000 men in one province, and 10,000 in the city of Dublin, ready to assist an invasion! Gentlemen, are you prepared to say that the kingdom of Ireland has been so forsaken by all principles of humanity and of loyalty, that there are now no less than 111,000 men sworn by the most solemn of all engagements, and connected in a deadly combination to destroy the constitution of the country, and to invite the common enemy, the French, to invade it—are you prepared to say this by your verdict? When you know not the intentions or the means of that watchful and insatiable enemy, do you think it would be wise by your verdict of guilty, to say, on the single testimony of a common informer, that you do believe upon your oaths that there is a body consisting of no less a number than 111,000 men ready to assist the French, if they should make an attempt upon this country, and ready to fly to their standard whenever they think proper to invade it? This is another point of view in which to examine this case. You know the distress and convulsion of the public mind for a considerable length of time; cautiously will I abstain from making observations that could refresh the public memory, situated as I am in a court of justice. But, gentlemen, this is the first, the only trial for high treason, in which an informer gives his notions of the propriety or impropriety of public measures; I remember none—except the trial of that unfortunate wanderer, that unhappy fugitive, for so I may call him, Jackson, a native of this country—guilty he was, but neither his guilt nor innocence had any affinity with any other system. But this is the first trial that has been brought forward for high treason, except that, where such matters have been disclosed; and, gentlemen, are you prepared to think well of the burden of embarking your character, high and respectable, on the evidence of an abandoned and, I will show you, a perjured and common informer, in declaring you are ready to offer up to death 111,000 men, one by one, by the sentence of a court of justice? Are you ready to meet it? Do not suppose I am base or mean enough to say anything to intimidate you, when I talk to you of such an event; but if you were prepared for such a scene, what would be your private reflections were you to do any such thing? Therefore I put the question fairly to you—have you made up your minds to tell the public, that as soon as James O'Brien shall choose to come forward again, to make the same charge against 111,000 other men, you are ready to see so many men, so many of your fellow-subjects and fellow-citizens, drop one by one into the grave, dug for them by his testimony?

Gentlemen, I do not think I am speaking disrespectfully to you when I say, that when such a character as Mr. O'Brien can be found, it may be the lot of the proudest among you to have a visitation from him, and instead of sitting in the jury-box, you might be at the bar where my client now stands. If you were standing there, how would you feel if you found that the evidence of such a wretch would be admitted as sufficient to attain your life, and send you to an ignominious death? Remember, I do beseech you, that great mandate of your religion—"Do thou unto all men as you would they should unto you."

Give me leave to put another point to you—what is the reason that you deliberate, that you condescend to listen to me, and try if from me anything can come to illuminate the subject before you? It is because you are bound by the sacred obligation of an oath. It is because you feel that that sacred obligation is a thing which you dare not forfeit. Have you any doubt that it is the object of O'Brien to take down the prisoner for the reward that follows? Have you not seen with what more than instinctive keenness this bloodhound has pursued his victim? How he has kept him in view from place to place until he hunts him through the avenues of the court to where the unhappy man stands now, hopeless of all succour but that which your verdict shall afford. I have heard of assassination by sword, by pistol, and by dagger; but here is a wretch who would dip the evangelists in blood: if he thinks he has not sworn his victim to death, he is ready to swear without mercy and without end. But oh! do not, I assure you, suffer him to take an oath—the hand of the murderer should not pollute the purity of the Gospel: if he will swear, let it be on the *knife*, the proper symbol of his profession.

Gentlemen, I am again reminded of that tissue of abominable slander and calumny with which O'Brien has endeavoured to load so great a portion of the adult part of your country. Is it possible you can believe the report of that wretch, that no less than 111,000 men are ready to destroy and overturn the government? I do not believe the abominable slander. I may have been too quick in condemning this man; and I know the argument which will be used, and, to a certain degree, it is not without sense—that you cannot always expect witnesses of the most unblemished character, and such things would never be brought to light if witnesses like O'Brien were rejected altogether. The argument is of some force; but does it hold here? or are you to believe it as a truth, because the fact is sworn to by an abominable and perjured witness? No; the law of England, the so-often-mentioned principle upon which that important statute is framed, denies the admission. An English judge would be bound to tell you, and the learned judges present will tell you, that a single accomplice is not to be believed without strong corroborative confirmations—I do not know where a contrary principle was entertained; if such has been the case, I never heard of it. O'Brien stated himself to have been involved in the guilt of the prisoner, in taking the obligation which was forced on him, and which he was afterwards obliged to wash down; but may not the whole description given by him be false? May he not have fabricated that story, and come forward as an informer in a transaction that never happened, from the expectation of pay and profit? How does he stand? He stands divested of a

single witness to support his character or the truth of his assertions, when numbers were necessary for each. You would be most helpless and unfortunate men, if everything said by the witness laid you under a necessity of believing it. Therefore he must be supported either by collateral or confirmatory evidence. Has he been supported by any collateral evidence, confirming what was sworn this day? No. Two witnesses have been examined, they are not additional witnesses to the overt acts; but if either of them should carry any conviction to your minds, you must be satisfied that the evidence given by O'Brien is false. I will not pollute the respectable and honourable character of Lord Portarlington, by mentioning it with the false and perjured O'Brien. Does his lordship tell you a single word but what O'Brien said to him? Because, if his lordship told all here that O'Brien told to him, O'Brien has done the same too; and though he has told Lord Portarlington every word which he has sworn on the table, yet still the evidence given by his lordship cannot be corroborative; because the probability is that he told a falsehood; you must take that evidence by comparison. And what did he tell Lord Portarlington? or, rather, what has Lord Portarlington told you?—That O'Brien did state to him the project of robbing the ordnance some time before he could possibly have known it himself. And it is material that he swore on the table that he did not know of the plot till his third meeting with the societies; and Lord Portarlington swears that he told it to him on the first interview with him: there the contradiction of O'Brien by Lord Portarlington is material; and the testimony of Lord Portarlington may be put out of the case, except so far as it contradicts that of O'Brien.

Mr. Justice CHAMBERLAIN.—It is material, Mr. Curran, that Lord Portarlington did not swear positively it was at the first interview, but that he was inclined to believe it was so.

Mr. CURRAN.—Your lordship will recollect that he said O'Brien did not say anything of consequence at any of the other interviews; but I put his lordship out of the question, so far as he does not contradict O'Brien, and he does so. If I am stating anything through mistake, I would wish to be set right; but Lord Portarlington said he did not recollect anything of importance at any subsequent meeting; and as far as he goes, he does beyond contradiction establish the false swearing of O'Brien. I am strictly right in stating the contradiction; so far as it can be compared with the testimony of O'Brien, it does weaken it; and, therefore, I will leave it there, and put Lord Portarlington out of the question—that is, as if he had not been examined at all, but where he differs from the evidence given by O'Brien.

As to the witness Clarke, after all he has sworn, you cannot but be satisfied he has not said a single word materially against the prisoner; he has not given any confirmatory evidence in support of any one overt act laid in the indictment. You have them upon your minds—he has not said one word as to the various meetings—levying money, or sending persons to France; and, therefore, I do warn you against giving it that attention for which it has been introduced. He does not make a second witness. Gentlemen, in alluding to the evidence of Lord Portarlington, which I have already mentioned, I was bound to make some observations. On the evidence of Clarke I am also obliged to do the same, because he has endeavoured to pre-

judice your minds by an endeavour to give a sliding evidence of what does not by any means come within this case; that is, a malignant endeavour to impute an horrid transaction—the murder of a man of the name of Thompson—to the prisoner at the bar; but I do conjure you to consider what motives there can be for insinuations of this sort, and why such a transaction, so remote from the case before you, should be endeavoured to be impressed on your minds. Gentlemen, I am not blinking the question, I come boldly up to it; and I ask you, in the presence of the court and of your God, is there one word of evidence that bears the shadow of such a charge, as the murder of that unfortunate man, to the prisoner at the bar? Is there one word to show how he died—whether by force, or by any other means? Is there a word how he came to his end? Is there a word to bring a shadow of suspicion that can be attached to the prisoner? Gentlemen, my client has been deprived of the benefit of a witness, May, (you have heard of it,) who, had the trial been postponed, might have been able to attend; we have not been able to examine him; but you may guess what he would have said—he would have discredited the informer O'Brien. The evidence of O'Brien ought to be supported by collateral circumstances. It is not; and though Roberts is not here, yet you may conjecture what he would have said. But, gentlemen, I have examined five witnesses, and it does seem as if there had been some providential interference carried on in bringing five witnesses to contradict O'Brien in his testimony, as to direct matters of fact, if his testimony could be put in competition with direct positive evidence. O'Brien said, he knew nothing of ordering back any money to Margaret Moore; he denied that fact. The woman was examined—what did she say on the table in the presence of O'Brien? That “an order was made, and the money refunded, after the magistrate had abused him for his conduct.” What would you think of your servant, if you found him committing such perjury—would you believe him? What do you think of this fact? O'Brien denies he knew anything of the money being refunded! What does Mrs. Moore say? That after the magistrate had abused him for his conduct the money was refunded, and that “she and O'Brien walked down stairs together!” Is this an accidental trip, a little stumble of conscience, or, is it not downright, wilful perjury? What said Mr. Clarke? I laid the foundation of the evidence by asking O'Brien, did you ever pass for a revenue officer? I call, gentlemen, on your knowledge of the human character, and of human life, what was the conduct of the man? Was it what you would have acted, if you had been called on in a court of justice? Did he answer me candidly? Do you remember his manner? “Not, sir, that I remember; it could not be when I was sober.” Did you do it at all? What was the answer—“I might, sir, have done it; but I must have been drunk. I never did anything dishonest.” Why did he answer thus? Because he did imagine he would have been opposed in his testimony, he not only added perjury to his prevarication, but he added robbery to both. There are thousands of your fellow-subjects waiting to know, if the fact charged upon the nation of 111,000 men ready to assist the common enemy be true; if upon the evidence of an abandoned wretch, a common cheat, a robber,

and a perjurer, you will convict the prisoner at the bar. As to his being a coiner, I will not pass that felony in payment among his other crimes, but I will offer it by itself; I will offer it as an emblem of his conscience, copper washed—I will offer it by itself.

What has O'Brien said? "I never remember that I did pretend to be a revenue officer; but I remember there was a man said something about whiskey; and I remember, I threatened to complain, and he was a little frightened—and he gave me three and three pence!"—I asked him, "Did his wife give you anything?"—"There was three and three pence between them."—"Who gave you the money?" "It was all I got from both of them!"—Gentlemen, would you let him into your house as a servant? Suppose one of you wanted a servant, and went to the other to get one; and suppose you heard that he personated a revenue officer; that he had threatened to become an informer against persons not having licences, in order to extort money to compromise the actions, would you take him as a servant? If you would not take him as a servant in exchange for his wages, would you take his perjuries in exchange for the life of a fellow-subject? Let me ask you, how would you show your faces to the public, and justify a barter of that kind, if you were to establish and send abroad his assignats of perjury to pass current as the price of human blood? How could you bear the tyranny your consciences would exercise over you; the dagger that would turn upon your heart's blood, if in the moment of madness you could suffer by your verdict the sword of justice to fall on the head of a victim committed to your sworn humanity, to be massacred in your presence by the perjured and abominable evidence that has been offered! But does it stop there?—Has perjury rested there?—No. What said the honest-looking, unlettered mind of the poor farmer?—What said Cavanagh?—"I keep a public-house,—O'Brien came to me, and pretended he was a revenue officer;—I knew not but it might be so;—he told me he was so—he examined my little beer I had, and my cask of porter." And, gentlemen, what did the villain do? While he was dipping his abandoned tongue in perjury and in blood, he robbed the wretched man of two guineas. Where is he now? Do you wonder he is afraid of my eye? that he has buried himself in the crowd? that he has shrunk into the whole of the multitude, when the witness endeavoured to disentangle him and his evidence? Do you not feel that he was appalled with horror by that more piercing and penetrating eye that looks upon him, and upon me, and upon us all?—The chords of his heart bore testimony by its flight, and proved that he fled for the same. But does it rest there? No. Witness upon witness appeared for the prisoner, to whom, I dare say, you will give that credit you must deny to O'Brien. In the presence of God they swore, "that they would not believe him upon his oath in the smallest matter." Do you know him, gentlemen of the jury?—Are you acquainted with James O'Brien?—If you do, let him come forward from that crowd where he has hid himself, and claim you by a look. Have you been fellow-companions?—If you have I dare say you will recognise him. Have I done with him yet?—No; while there is a thread of his villainy together, I will tatter it, lest you should be caught with it. Did he dare to say to the solicitor for the

crown, to the counsel that are persecuting the prisoner, that "there is some one witness on the surface of the globe that will say, he believes I am not a villain; but I am a man that deserves some credit on my oath in a court of justice?" Did he venture to call one human being to that fact? But why did they not venture to examine the prisoner's witnesses, as to the reasons of their disbelief? What, if I was bold enough to say of any of you, gentlemen, that I did not think you deserved credit on your oath, would not the first question you would ask be the reason for that opinion? Did he venture to ask that question? No. I think the trial has been fairly and humanely carried on. Mrs. Moore was examined; she underwent a cross-examination—the object was to impeach her credit. I offered to examine to her character; no—I would not be suffered to do it;—they were right in the point of law. Gentlemen, let me ask you another question:—Is the character of O'Brien such, that you think he did not know that any human creature was to attack it? Did you not see him coiling himself in the scaly circles of his perjury, making anticipated battle against the attack, that he knew would be made, and spitting his venom against the man that might have given such evidence of his infamous character, if he had dared to appear.

Gentlemen, do you feel now that I was maliciously aspersing the character of O'Brien? What language is strong enough to describe the mixture of swindling and imposition which, in the face of justice, this wretch has been guilty of? Taking on himself the situation of one of the King's officers, to rob the King's subjects of the King's money; but that is not enough for him—in the vileness and turpitude of his character he afterwards wants to rob them of their lives by perjury. Do I speak truly to you, gentlemen, when I have shown you the witness in his real colours—when I have shown you his habitual fellowship with baseness and fraud? He gave a recipe for forging money. "Why did you give it to him?" "He was an inquisitive man, and I gave it as a matter of course." "But why did you do it?" "It was a light, easy way of getting money—I gave it as a humbug." He gave a recipe for forging the coin of the country, because it was a light, easy way of getting money! Has it, gentlemen, ever happened to you in the ordinary passages of life, to have met with such a constellation of atrocities and horrors, and that in a single man? What do you say to Clarke? Except his perjury, he has scarcely ground to turn on. What was his cross-examination? "Pray, sir, were you in court yesterday?" "No, sir; I was not." "Why?" "Mr. Kemmis sent me word not to come." There happened to be several persons who saw him in court: one of them swore it—the rest were ready. Call up little Skirmish again.* "Pray, Skirmish, why did you say you were not in court yesterday, when you were?" "Why, it was a little bit of a mistake, not being a lawyer. It being a matter of law, I was mistaken." "How did it happen you were mistaken?" "I was puzzled by the hard questions that Mr. McNally asked me." What was the hard question he was asked? "Were you in court yesterday?" "No; Mr. Kemmis sent me word I need not come!" Can you, gentlemen of the jury, suppose that any simple

* Little Skirmish, a character in *The Deserter*.

well-meaning man would commit such a gross and abominable perjury? I do think he is a credible man; that is, that he swore truer than Lord Portarlington did, because it stands on a single testimony; he may be true, because he has sworn on both sides: he has sworn positively that he was not in the court yesterday; and he has sworn positively he was! so that, wherever the truth is, he is found in it; let the ground be clean or dirty, he is in the midst of it. There is no person but deserves some little degree of credit; if the soul was as black as night, it would burn to something in hell. But let me not appear to avoid the question by any seeming levity upon it. O'Brien stands blackened by the unimpeached proofs of five positive perjuries. If he was indicted on any of them, he could not appear to give evidence in a court of justice; and I do call upon you, gentlemen of the jury, to refuse him on his oath that credit which never ought to be squandered on the evidence of an abandoned and self-convicted perjurer.

The charge is not merely against the prisoner at the bar; it takes in the entire character of your country. It is the first question of the kind for ages brought forward in this nation to public view, after an expectation of years. It is the great experiment of the informers of Ireland, to see with what success they may make this traffic of human blood. Fifteen men now in gaol, depending on the fate of the unfortunate prisoner, and on the same blasted and perjured evidence of O'Brien. I have stated at large the case, and the situation of my client; I make no apology for wasting your time; I regret I have not been more able to do my duty; it would insult you if I were to express any such feeling to you. I have only to apologize to my client for delaying his acquittal. I have blackened the character of O'Brien in every point of view; and, though he anticipated that attack that would be made on it, yet he could not procure one human being even base enough to depose, that he was to be believed on his oath.

The character of the prisoner has been given. Am I warranted in saying, that I am now defending an innocent and unfortunate fellow-subject, on the grounds of eternal justice and immutable law; and on that eternal law I do call upon you to acquit my client. I call upon you for your justice! Great is the reward, and sweet the recollection in the hour of trial, and in the day of dissolution; when the casualties of life are pressing close upon your heart, and when, in the agonies of death, you look back to the justifiable and honourable transactions of your life. At the awful foot of eternal justice I do, therefore, invite you to acquit my client; and may God of his infinite mercy! grant you that great compensation which is a reward more lasting than that perishable crown we read of, which the ancients gave to him who saved the life of a fellow-citizen in battle. In the name of public justice! I do implore you to interpose between the perjurer and his intended victim; and, if ever you are assailed by the villainy of an informer, may you find refuge in the recollection of that example which, when jurors, you set to those that might be called to pass upon your lives; to repel at the human tribunal the intended effects of hireling perjury, and premeditated murder; and, if it should be the fate of any of you to count the tedious moments of captivity, in sorrow and in pain, pining in the damps and gloom of a dungeon, recollect there is another more awful tribunal than any on earth,

which we must all approach, and before which the best of us will have occasion to look back to what little good we may have done on this side the grave; I do pray, that Eternal Justice may record the deed you have done, and give to you the full benefit of your claims to an eternal reward, a requital in mercy upon your souls.

The SOLICITOR-GENERAL replied, after which the jury was addressed by Judge CHAMBERLAIN and Baron SMITH. The jury retired for a about a quarter of an hour and then came into their box with a verdict of NOT GUILTY.

On Thursday, the 19th, several other persons, accused by the same witness, were brought up; and, having joined in their challenges, were committed to the jury together, and no witness being produced, they were of course acquitted; and, after having taken the oath of allegiance and having entered into recognizances for their good behaviour, were discharged.

END OF FINNEY'S TRIAL.

15/18
20



3 2044 020 048 534

This book
the Library on or before the last date
stamped below.

A fine of five cents a day is incurred
by retaining it beyond the specified
time.

Please return promptly.

~~DEC 18 1998~~ 6-40



